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# TEXAS REGISTER

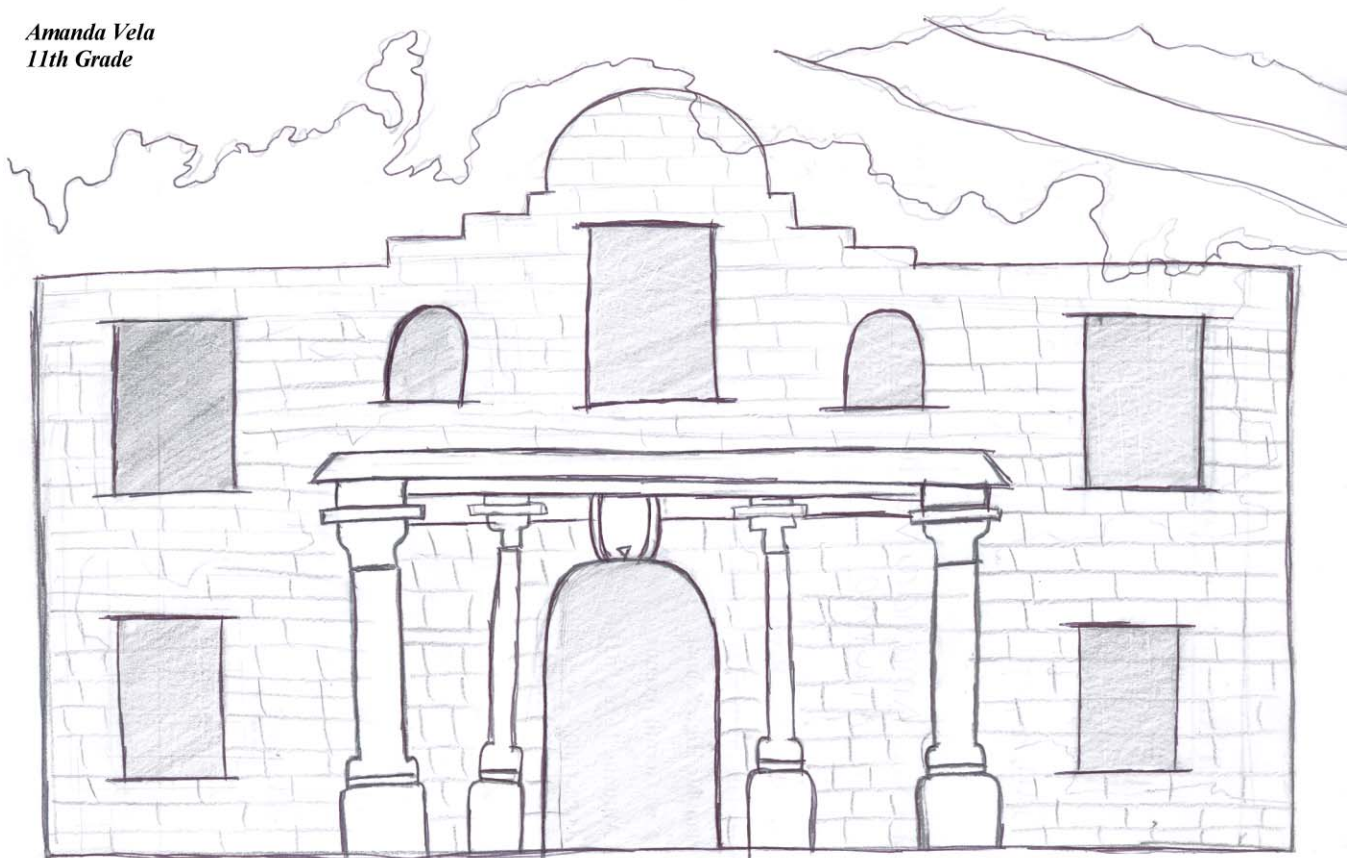
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*Amanda Vela  
11th Grade*



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:  
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: [register@sos.state.tx.us](mailto:register@sos.state.tx.us)

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/open/index.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:  
<http://www.texas.gov>

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**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Appointments

### Appointments for March 16, 2011

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2013, Mark Dunn of Lufkin (replacing Karen Bonner of Corpus Christi who resigned).

Designating Kristin K. Benton as presiding officer of the Texas Board of Nursing for a term at the pleasure of the Governor. Ms. Benton is replacing Linda Rounds of Galveston as presiding officer.

Rick Perry, Governor

TRD-201101157



## Proclamation 41-3248

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, issued an Emergency Disaster Proclamation on December 21, 2010, as extreme fire hazard posed a threat of imminent disaster in specified counties in Texas;

WHEREAS, the extreme fire hazard continues to create a threat of disaster for the people in the State of Texas.

WHEREAS, the state of disaster includes the counties of Anderson, Andrews, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brazos, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culbertson, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hardin, Harris, Harrison, Hartley, Haskell, Hays, Hemphill, Henderson, Hidalgo, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchison, Irion,

Jack, Jackson, Jasper, Jeff Davis, Jefferson, Jim Hogg, Johnson, Jones, Karnes, Kaufman, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Nueces, Ochiltree, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Polk, Potter, Presidio, Rains, Randall, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Ward, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wise, Yoakum, Young, Zapata and Zavala.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that disaster.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 18th day of March, 2011.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-201101158



# THE ATTORNEY GENERAL

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The *Texas Register* publishes summaries of the following:  
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

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## Requests for Opinions

### **RQ-0951-GA**

#### **Requestor:**

Honorable Mike Jackson

Chair, Committee on Economic Development

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Use of the judicial fund created by section 21.006, Government Code (RQ-0951-GA)

#### **Briefs requested by April 14, 2011**

### **RQ-0952-GA**

#### **Requestor:**

The Honorable Jerry D. Rochelle

Bowie County Criminal District Attorney

Bowie County Plaza

Post Office Box 3030

601 Main Street

Texarkana, Texas 75504

Re: Responsibility for an individual who is the subject of an emergency detention order (RQ-0952-GA)

#### **Briefs requested by April 15, 2011**

### **RQ-0953-GA**

#### **Requestor:**

Mr. Robert Scott

## Commissioner of Education

Texas Education Agency

1701 N. Congress Avenue

Austin, Texas 78701-1494

Re: Authority of a school district to defray legal expenses for an administrator who files a defamation action (RQ-0953-GA)

#### **Briefs requested by April 20, 2011**

### **RQ-0954-GA**

#### **Requestor:**

The Honorable Joseph Deshotel

Chair, Committee on Business and Industry

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Construction of article III, section 18, Texas Constitution, which prohibits a legislator from being interested in any contract with the state of Texas (RQ-0954-GA)

#### **Briefs requested by April 21, 2011**

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-201101159

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: March 23, 2011

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# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

### PART 1. OFFICE OF THE GOVERNOR

#### CHAPTER 3. CRIMINAL JUSTICE DIVISION

##### SUBCHAPTER H. CRIME STOPPERS

##### PROGRAM CERTIFICATION

##### DIVISION 1. CRIME STOPPERS PROGRAM CERTIFICATION

**1 TAC §§3.9000, 3.9005 - 3.9008, 3.9010, 3.9011, 3.9013, 3.9015, 3.9017, 3.9019, 3.9021, 3.9023**

The Texas Crime Stoppers Council (Council) proposes the amendment of Title 1, Part 1, Chapter 3, Subchapter H, Division 1, §§3.9000, 3.9005, 3.9007, 3.9010, 3.9011, 3.9013, 3.9015, 3.9017, 3.9019, and 3.9021, and the addition of §§3.9006, 3.9008, and 3.9023.

The proposed amendment to §3.9000: (1) adds the word "initial" in subsections (d) and (e) to clarify that these subsections are applicable to a local crime stoppers organization (organization) that is applying for certification for the first time; (2) requires the executive director of an organization that is applying for initial certification to receive basic crime stoppers training in order to help the executive director understand the applicable state statutes and requirements unique to administering an organization; (3) requires an organization that is applying for initial certification to provide current contact information for the organization's executive director, if applicable, to be included in the Council's database, along with current data for the organization's board of directors and law enforcement coordinator; (4) requires an organization that is applying for initial certification to describe the geographic territory or jurisdiction that the organization desires to serve in order to ensure that specific geographic areas of the state are being adequately served by a certified organization and to prevent overlap of services by certified organizations; (5) clarifies that an organization certified by the Council is only permitted to operate in, and receive court funds from, the geographic territory or jurisdiction set forth in the certification award issued by the Council; and (6) uses the word "Council" instead of the words "Texas Crime Stoppers Council" to simplify the language of the rule.

The proposed amendment to §3.9005: (1) corrects the reference to §3.9000 of this chapter; (2) changes the word "shall" to "may" in order to clarify that decertification is a discretionary decision by the Council; (3) adds a requirement that the Council notify the relevant courts when an organization has lost its certification and is no longer eligible to receive court fees; and (4) uses the word

"Council" instead of the words "Texas Crime Stoppers Council" to simplify the language of the rule.

The proposed amendment to §3.9007: (1) clarifies that a crime stoppers organization that chooses to no longer operate or dissolves during its two-year certification period shall provide written notification to the Council; (2) states that this written notification effectively decertifies the organization; (3) states that the decertified organization is no longer eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42.12 of the Texas Code of Criminal Procedure; (4) requires the director of the Council to notify the state comptroller, and the relevant courts, county auditors, and community supervision and corrections departments in the decertified organization's region of the organization's ineligibility status; and (5) requires the decertified organization to forward all unexpended money received under this section to the state comptroller within 60 days after the date of decertification.

The proposed amendment to §3.9010 and §3.9013 uses the word "Council" instead of the words "Texas Crime Stoppers Council" to simplify the language of the rule.

The proposed amendment to §3.9011: (1) requires that contact information for the organization's executive director, if applicable, be included in the annual Crime Stoppers Program Information Update Form so that current information is included in the Council's database; and (2) uses the word "Council" instead of the words "Texas Crime Stoppers Council" to simplify the language of the rule.

The proposed amendment to §3.9015: (1) adds the words "expiration or non-renewal of certification" to distinguish between the Council's action to decertify an organization and the Council's decision to not renew an organization's certification when it expires; and (2) uses the word "Council" instead of the words "Texas Crime Stoppers Council" to simplify the language of the rule.

The proposed amendment to §3.9017: (1) revises the language to clarify that the section applies to certified organizations that have agreed to merge; (2) allows a merged organization to choose a new name for the organization or keep the name of one of the existing organizations; (3) requires a merged organization to provide the Council with copies of the cooperative agreement or memorandum of understanding (MOU) between the merged organizations, each organization's board minutes for the meeting during which the cooperative agreement or MOU is approved to allow the Council, and the forms required to be filed with the Texas Secretary of State, state comptroller and Internal Revenue Service, in order to allow the Council to fully examine the nature of the merger; (4) requires a merged organization to describe the geographic territory or jurisdiction that the

merged organization will serve in order to ensure that specific geographic areas of the state are being adequately served by a certified organization and to prevent overlap of services by certified organizations; (5) eliminates the requirement that a merged organization provide the Council with a letter agreeing to follow the Council's Standard Operating Procedures Manual provisions regarding the operation of multi-county programs because organizations, which vary widely in their size, board composition, and operational capabilities, should not be held to the same standards for all operational aspects; (6) removes the requirement that a merged organization cannot use excess funds for a period of three years after the merger occurred because the requirement is too restrictive and instead allows a merged organization to continue to use excess funds that were already in the organization's "Excess Funds Account" on the date that the merger occurred; and (7) uses the word "Council" instead of the words "Texas Crime Stoppers Council" to simplify the language of the rule.

The proposed amendment to §3.9019: (1) revises the language to clarify that the section applies to the merger of non-certified organizations to certified organizations; (2) allows a merged organization to choose a new name for the organization or keep the name of one of the existing organizations; (3) requires a merged organization to provide the Council with copies of the cooperative agreement or memorandum of understanding ("MOU") between the merged organizations, each organization's board minutes for the meeting during which the cooperative agreement or MOU is approved, and the forms required to be filed with the Texas Secretary of State, state comptroller and Internal Revenue Service, in order to allow the Council to fully examine the nature of the merger; (4) requires a merged organization to describe the geographic territory or jurisdiction that the merged organization will serve in order to ensure that specific geographic areas of the state are being adequately served by a certified organization and to prevent overlap of services by certified organizations; (5) eliminates the requirement that a merged organization provide the Council with a letter agreeing to follow the Council's Standard Operating Procedures Manual provisions regarding the operation of multi-county programs because organizations, which vary widely in their size, board composition, and operational capabilities, should not be held to the same standards for all operational aspects; (6) removes the requirement that a merged organization cannot use excess funds for a period of three years after the merger occurred because the requirement is too restrictive and instead allows a merged organization to continue to use excess funds that were already in the organization's "Excess Funds Account" on the date that the merger occurred; and (7) uses the word "Council" instead of the words "Texas Crime Stoppers Council" to simplify the language of the rule.

The proposed amendment to §3.9021: (1) clarifies that this section applies to changes in "geographic territory or jurisdiction"; (2) removes the requirement regarding the development of an operational agreement or MOU with a citizens' delegation from a city or county as unnecessary and instead requires written documentation from citizens of the geographic territory showing an interest in joining an existing organization; (3) clarifies the Council's authority to define the geographic territory or jurisdiction of an organization; (4) eliminates the requirement that an organization, which is seeking to expand its geographic territory or jurisdiction, provide the Council with a letter agreeing to follow the Council's Standard Operating Procedures Manual provisions regarding the operation of multi-county programs because organizations, which vary widely in their size, board composition, and

operational capabilities, should not be held to the same standards for all operational aspects; (5) requires an organization, which is seeking to expand its geographic territory or jurisdiction, to provide notice to the Council and an organization serving the territory to which it intends to expand of its intent to serve that area in order to prevent conflicts between organizations that are attempting to operate in the same geographic area; and (6) uses the word "Council" instead of the words "Texas Crime Stoppers Council" to simplify the language of the rule.

The proposed addition of §3.9006: (1) clarifies the Council's authority to allow an organization's certification to expire or to vote to not renew an organization's certification; (2) sets forth the procedures used by the Council when considering the certification renewal of an organization that has timely submitted a request for renewal of its certification; and (3) sets forth the requirements that an organization must follow if the organization chooses to no longer operate or decides to dissolve as a 501(c)(3) non-profit organization or as a certified local public organization.

The proposed addition of §3.9008: (1) restates the provisions that were previously located in §3.9007 regarding complaints or allegations against an organization; and (2) uses the word "Council" instead of the words "Texas Crime Stoppers Council" to simplify the language of the rule.

The proposed addition of §3.9023 clarifies how rewards accounts are to be handled when two or more organizations agree to merge.

Christopher Burnett, Executive Director of the Governor's Criminal Justice Division, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Burnett has also determined that for the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the sections will be more efficient processes and procedures and the current rules will be more easily understood. There will be no anticipated economic cost to persons or small businesses for complying with the proposed rules.

Comments on the proposed rules may be submitted to Heather Morgan, Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, Texas 78711, (512) 463-1919; [hmorgan@governor.state.tx.us](mailto:hmorgan@governor.state.tx.us). Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment and addition of these rules are proposed under §414.006, Texas Government Code, which authorizes the Council to adopt rules to carry out its functions.

The amended and added rules implement §414.005, Texas Government Code, which sets forth the duties of the Council.

No other statutes, articles, or codes are affected by the amendment or addition of these rules.

#### *§3.9000. Certification.*

(a) The Texas Crime Stoppers Council (Council) shall, on application by a crime stoppers organization as defined by §414.001(2) of the Texas Government Code, determine whether the organization meets the requirements to be certified to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42.12 of the Texas Code of Criminal Procedure.

(b) The [Texas Crime Stoppers] Council shall, in its discretion, certify a crime stoppers organization to receive those repayments or payments if, considering the organization, continuity, leadership, community support, and general conduct of the organization, the Council determines that the repayments or payments will be spent to further the crime prevention purposes of the organization.

(c) Certification is valid for two years from the date of issuance. If a crime stoppers organization's certification expires, the organization is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42.12 of the Texas Code of Criminal Procedure, until the organization obtains certification. The two-year certification period may be extended under the following circumstances:

(1) If an organization's application to renew its certification is received by the director of the [Texas Crime Stoppers] Council before the two-year certification period expires, the organization's certification shall continue in effect until the Council makes a decision regarding the renewal of its certification.

(2) The chairman of the [Texas Crime Stoppers] Council may extend the two-year certification period for a period of time not to exceed 90 days if:

(A) - (B) (No change.)

(C) the director of the [Texas Crime Stoppers] Council receives the organization's written request to extend the certification period no later than 20 calendar days after one of the extenuating circumstances listed in subparagraph (A) of this paragraph occurs.

(d) A private, nonprofit crime stoppers organization must submit the following information to the director of the [Texas Crime Stoppers] Council in order to obtain initial certification:

(1) (No change.)

(2) Proof that the following persons completed a training course provided by CJD and the [Texas Crime Stoppers] Council, or their designee, within the year prior to submission of its application for certification:

(A) (No change.)

(B) one of the organization's law enforcement/civilian coordinators; and

(C) the executive director of the organization (if applicable);

(3) - (4) (No change.)

(5) The name, mailing address, email address, and telephone number of each of the organization's law enforcement/civilian coordinators; [and]

(6) The name, mailing address, email address, telephone number, and occupation of the executive director (if applicable); and [If the organization is currently certified by the Texas Crime Stoppers Council or the organization's most recent certification expired within three years prior to submission of its application for certification, the organization must submit the following additional information:]

[(A) financial statements covering the two-year certification period on a form prescribed by the Texas Crime Stoppers Council;]

[(B) documentation from the relevant courts or government agencies stating the amount of probation fees disbursed to the organization during the two-year certification period;]

[(C) any Annual Probation Fee and Repayment Reports that have not been submitted to the director of the Texas Crime Stoppers Council as required by §3.9010 of this chapter; and]

[(D) any Quarterly Statistical Reports that have not been submitted to the director of the Texas Crime Stoppers Council as required by §3.9013 of this chapter.]

(7) The description of the geographic territory or jurisdiction to which the organization desires to provide services.

(e) A public crime stoppers organization must submit the following information to the director of the [Texas Crime Stoppers] Council in order to obtain initial certification:

(1) - (3) (No change.)

(4) The name, mailing address, email address, and telephone number of each of the organization's law enforcement/civilian coordinators; [and]

(5) The name, mailing address, email address, telephone number, and occupation of the organization's executive director (if applicable); and [If the organization is currently certified by the Texas Crime Stoppers Council or the organization's most recent certification expired within three years prior to submission of its application for certification, the organization must submit the following additional information:]

[(A) financial statements covering the two-year certification period on a form prescribed by the Texas Crime Stoppers Council;]

[(B) documentation from the relevant courts or government agencies stating the amount of probation fees disbursed to the organization during the two-year certification period;]

[(C) any Annual Probation Fee and Repayment Reports that have not been submitted to the director of the Texas Crime Stoppers Council as required by §3.9010 of this chapter; and]

[(D) any Quarterly Statistical Reports that have not been submitted to the director of the Texas Crime Stoppers Council as required by §3.9013 of this chapter.]

(6) The description of the geographic territory or jurisdiction to which the organization desires to provide services.

(f) If the organization is currently certified by the Council, the organization must submit the documentation described in subsection (d) or (e) of this section, as applicable, and the following additional information every two years as part of its Application for Continued Certification: [Decisions regarding the certification of crime stoppers organizations shall be made by the Texas Crime Stoppers Council.]

(1) financial statements covering the two-year certification period on a form prescribed by the Council;

(2) documentation from the relevant courts or government agencies stating the amount of probation fees disbursed to the organization during the two-year certification period;

(3) any Annual Probation Fee and Repayment Reports that have not been submitted to the director of the Council as required by §3.9010 of this chapter; and

(4) any Quarterly Statistical Reports that have not been submitted to the director of the Council as required by §3.9013 of this chapter.

(g) Certification awarded to an organization is awarded only as to the specific geographic territory or jurisdiction described in the certification award.

(h) Decisions regarding the certification of crime stoppers organizations shall be made by the Council.

§3.9005. Decertification.

(a) During the two-year certification period, the Texas Crime Stoppers Council (Council) may [shall], in its discretion, decertify a crime stoppers organization if it determines that the organization no longer meets the certification requirements described in §3.9000 [§3.9000(b)] of this chapter, which may include a violation of state law, federal law, or Subchapter H of this chapter.

(b) If a crime stoppers organization is decertified by the [Texas Crime Stoppers] Council, the organization is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42.12 of the Texas Code of Criminal Procedure.

(c) The [Texas Crime Stoppers] Council shall send written notification to the crime stoppers organization no later than 45 calendar days prior to the meeting at which the Council will consider the decertification of the organization. The written notification shall include the following:

(1) - (2) (No change.)

(d) The crime stoppers organization shall submit a written response, which shall include an explanation and specific reasons why the organization believes that it should not be decertified. The written response must be received by the director of the [Texas Crime Stoppers] Council at least 10 calendar days prior to the meeting at which the Council will consider the decertification of the organization.

(e) The [Texas Crime Stoppers] Council shall render a decision regarding the decertification of the crime stoppers organization and shall notify the organization in writing of its decision.

(f) If a crime stoppers organization is decertified, the director of the [Texas Crime Stoppers] Council shall notify the state comptroller, and the relevant courts, county auditors and community supervision and corrections departments in the organization's region, that the organization is decertified and is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42.12 of the Texas Code of Criminal Procedure.

(g) (No change.)

§3.9006. Expiration or Non-Renewal of Certification.

(a) At the end of the two-year certification period, the Texas Crime Stoppers Council (Council) may, in its discretion, allow a crime stoppers organization's certification to expire or vote to not renew its certification.

(b) If a crime stoppers organization's certification expires or is not renewed, the organization is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42.12 of the Texas Code of Criminal Procedure.

(c) If an organization has submitted a timely application to renew its certification:

(1) The Council shall send written notification to the crime stoppers organization no later than 45 calendar days prior to the meeting at which the Council will consider the renewal of certification of the organization. The written notification shall include the following:

(A) Any noncompliance with the certification requirements described in §3.9000 of this chapter; and

(B) The date, time, and location of the meeting at which the Council will consider the certification renewal of the organization.

(2) The crime stoppers organization may submit a written response, which shall include an explanation and specific reasons why the organization believes that its certification should be renewed. The written response must be received by the director of the Council at least 10 calendar days prior to the meeting at which the Council will consider the decertification of the organization.

(3) The Council shall render a decision regarding the certification renewal of the crime stoppers organization and shall notify the organization in writing of its decision.

(d) If a crime stoppers organization's certification expires or is not renewed, the director of the Council shall notify the state comptroller, and the relevant courts, county auditors and community supervision and corrections departments in the organization's region, that the organization is decertified and is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42.12 of the Texas Code of Criminal Procedure.

(e) Not later than the 60th day after the date of expiration or non-renewal of the certification of the organization, the organization shall forward all unexpended money received under this section to the state comptroller.

§3.9007. Closing of Business [Complaints or Allegations Against a Crime Stoppers Organization].

(a) If a crime stoppers organization chooses to no longer operate or to dissolve during its two-year certification period or if the organization chooses to not apply for renewal of its certification, the organization shall send written notification to the Texas Crime Stoppers Council (Council). [Any complaint against a crime stoppers organization or allegation that a crime stoppers organization fails to meet the certification requirements described in §3.9000(b) of this chapter must be submitted in writing to the director of the Texas Crime Stoppers Council. The Texas Crime Stoppers Council may only consider complaints or allegations made against a crime stoppers organization that is certified, or has applied to be certified, by the Texas Crime Stoppers Council pursuant to §3.9000 of this chapter.]

(b) The written notification will effectively decertify the organization. The date of the notification will serve as the date of decertification.

(c) The closed or dissolved organization is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42.12 of the Texas Code of Criminal Procedure.

(d) Upon receipt of this notification and effective decertification, the director of the Council shall notify the state comptroller, and the relevant courts, county auditors and community supervision and corrections departments in the organization's region, that the organization is decertified and is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42.12 of the Texas Code of Criminal Procedure.

(e) Not later than the 60th day after the date of decertification of the organization, the decertified organization shall forward all unexpended money received under this section to the state comptroller.

§3.9008. Complaints or Allegations Against a Crime Stoppers Organization.

Any complaint against a crime stoppers organization or allegation that a crime stoppers organization fails to meet the certification requirements

described in §3.9000 of this chapter must be submitted in writing to the director of the Texas Crime Stoppers Council (Council). The Council may only consider complaints or allegations made against a crime stoppers organization that is certified, or has applied to be certified, by the Council pursuant to §3.9000 of this chapter.

*§3.9010. Annual Probation Fee and Repayment Report.*

A crime stoppers organization that is certified by the Texas Crime Stoppers Council (Council) shall submit to the director of the [Texas Crime Stoppers] Council an Annual Probation Fee and Repayment Report no later than January 31 of each calendar year.

*§3.9011. Crime Stoppers Program Information Update Form.*

(a) A crime stoppers organization that is certified by the Texas Crime Stoppers Council (Council) must submit to the director of the [Texas Crime Stoppers] Council a Crime Stoppers Program Information Update Form no later than January 31 of each calendar year.

(b) A Crime Stoppers Program Information Update Form must include the following information:

- (1) (No change.)
- (2) The name, mailing address, email address, telephone number, occupation, and board position of each member of the organization's governing board; [and]
- (3) The name, mailing address, email address, [and] telephone number, and occupation of [each of] the organization's executive director (if applicable); and [law enforcement/civilian coordinators.]
- (4) The name, mailing address, email address, and telephone number of each of the organization's law enforcement/civilian coordinators.

*§3.9013. Quarterly Statistical Reports.*

A crime stoppers organization that is certified by the Texas Crime Stoppers Council (Council) shall submit to the director of the [Texas Crime Stoppers] Council, or the Council's designee, a Quarterly Statistical Report on a form prescribed by the Council no later than January 31, April 30, July 31, and October 31 of each calendar year.

*§3.9015. Review.*

By accepting certification, a crime stoppers organization agrees to the following conditions of review:

- (1) CJD will review the activities of a crime stoppers organization that is certified by the Texas Crime Stoppers Council (Council) as necessary to ensure that the organization's finances and programs further the crime prevention purposes of the organization in compliance with the laws and rules governing crime stoppers organizations.
- (2) - (4) (No change.)
- (5) The organization's response shall become part of the final report, which shall be submitted to the organization and the director of the [Texas Crime Stoppers] Council.
- (6) Any noncompliance, including an organization's failure to provide adequate documentation upon request, may serve as grounds for decertification, expiration or non-renewal of certification of the organization by the [Texas Crime Stoppers] Council.

*§3.9017. Mergers of Certified Organizations [Programs].*

If a certified crime stoppers organization [Crime Stoppers program] agrees with another certified crime stoppers organization [Crime Stoppers program] to merge and form a multi-county or multi-jurisdictional (i.e., county and city) organization [program], the merged organization [new program] must apply for continuing certification [Continuing

Certification since it is no longer the program that was originally certified by the Council], and the following procedures must be followed:

(1) The certified crime stoppers organizations [Crime Stoppers programs] that want to merge must have contiguous borders.

(2) The merging organizations [participating programs] must choose a name for the merged organization unless both organizations agree to operate under the name of one of the existing organizations. [develop a cooperative agreement or memorandum of understanding (MOU) regarding the merger; each program's Board of Directors must vote to approve the cooperative agreement or MOU.]

(3) The merged organization must file the following documents with the director of the Texas Crime Stoppers Council (Council) requesting certification under a new name (if applicable) and with the expanded geographic territory or jurisdiction: [The merging programs must choose a name for the new program unless both programs agree to operate under the name of one of the existing programs.]

(A) All required Texas Secretary of State, Texas Comptroller, and United States Internal Revenue Service (IRS) required forms and documentation for mergers and dissolutions, as applicable;

(B) IRS compliance documents for dissolution of a 501(c)(3) non-profit corporation and a 501(c)(3) letter authorizing the organization to operate under the new name (if applicable);

(C) Texas Secretary of State compliance documents for 501(c)(3) non-profit corporations;

(D) Application for Continuing Certification under the new name (if applicable) and with an expanded geographic territory or jurisdiction;

(E) Copies of financial reviews of the restricted court fees accounts for all merging organizations as required in §414.010(b), Texas Government Code; these financial reviews must be conducted by a Certified Public Accountant;

(F) Copy of board of directors membership list of the merged organization, to include contact information for board members, the law enforcement coordinator, and the executive director (if applicable);

(G) Copies of letters from community supervision and corrections departments (CSCD) detailing the amount of court fees paid to the merging organizations during the previous two years, up to and including the date of the proposed merger, under the provisions of Articles 42.12, 37.073 and 42.152, Texas Code of Criminal Procedure;

(H) Training certificates showing that at least one board member, the law enforcement coordinator, and an executive director (if applicable) received training as authorized by the Council within the 12-month period preceding the merger;

(I) Copies of Probation Fee and Repayment Reports for the merging organizations for the previous two calendar years as specified by §414.010(a), Texas Government Code;

(J) Copies of the minutes of the boards of directors meetings of both certified crime stoppers organizations in which the boards voted to merge their organizations; and

(K) Copy of a cooperative agreement or memorandum of understanding (MOU) between the merged organizations regarding the merger and a copy of each organization's minutes of the board of directors for the meeting where the agreement or MOU is approved.

(4) If the director of the Council determines that the merged organization meets all requirements within paragraphs (1) - (3) of this

section, the merged organization will be presented to the Council for certification at the Council's next regularly scheduled meeting. [The newly established program must file the following documents with the Director of the Texas Crime Stoppers Council requesting certification under a new name and with an expanded geographical territory:]

{(A) United States Internal Revenue Service (IRS) compliance documents for dissolution of a 501(c)(3) non-profit corporation and a 501(c)(3) letter authorizing the program to operate under the new name;}

{(B) Texas Secretary of State compliance documents for 501(c)(3) non-profit corporations;}

{(C) Application for Continuing Certification under the new name and with an expanded geographical territory;}

{(D) Copies of financial reviews of the restricted court fees accounts for all merging programs as required in §414.010(b), Texas Government Code; these financial reviews must be conducted by a Certified Public Accountant;}

{(E) Copy of Board of Directors membership list of the new program; to include contact information for Board members and the law enforcement coordinator;}

{(F) Copies of letters from Community Supervision and Corrections Departments (CSCD) detailing the amount of court fees paid to the merging programs during the previous two years, up to and including the date of the proposed merger, under the provisions of Articles 42.12, 37.073 and 42.152, Code of Criminal Procedure;}

{(G) Training certificates showing that at least one Board member, the law enforcement coordinator, and an executive director (if applicable) received training as authorized by the Texas Crime Stoppers Council within the 12-month period preceding the merger;}

{(H) Copies of Probation Fee and Repayment Reports for the merging programs for the previous two calendar years as specified by §414.010(a), Texas Government Code;}

{(I) Copies of the Minutes of the Boards of Directors meetings of both certified Crime Stoppers programs in which the Boards voted to merge their programs; and}

{(J) A letter addressed to the Texas Crime Stoppers Council stating that the new program will follow all rules applicable to the operations of Multi-County Programs as stated in the Standard Operating Procedures Manual of the Texas Crime Stoppers Council.}

(5) Once the Council grants certification, the merged organization may merge or consolidate the separate rewards accounts of both organizations. The merged organization will also be eligible to apply to the relevant CSCDs to receive court fees under the provisions of Articles 42.12, 37.073, and 42.152, Texas Code of Criminal Procedure. [If the Director of the Texas Crime Stoppers Council determines that the new program meets all requirements within paragraphs (1) - (4) of this section, the program will be presented to the Council for certification at the Council's next regularly scheduled meeting.]

(6) The merged organization's "Excess Funds Account," as defined in §414.01(d) of the Texas Government Code, may only be comprised of those funds that were previously in each individual organization's "Excess Funds Account." Three years from the merged organization's certification date, the merged organization may establish an "Excess Funds Account" in accordance with §414.01(d) of the Texas Government Code. [Once the Texas Crime Stoppers Council grants certification, the new program can merge the restricted bank accounts of both programs, as well as all other accounts held by the en-

ties. The new program will also be eligible to apply to the relevant CSCDs to receive court fees under the provisions of Articles 42.12, 37.073, and 42.152, Code of Criminal Procedure.]

(7) The certification is valid for a period of two years. [The new program is not eligible to establish an "Excess Funds Account" under the provisions of §414.010(d), Texas Government Code; until three years from the certification date.]

{(8) The certification is valid for a period of two years.}

{(9) All certified programs, regardless of the date on which any existing mergers occurred, must comply with these rules upon re-certification.}

§3.9019. Mergers of Non-certified Organizations [Programs] to Certified Organizations [Programs].

If a certified crime stoppers organization agrees with a non-certified crime stoppers organization to merge and form a multi-county or multi-jurisdictional (i.e., county and city) organization, the merged organization must apply for certification, and the following procedures must be followed:

(1) The certified crime stoppers organization that wants to merge with a non-certified 501(c)(3) crime stoppers organization must have contiguous borders.

(2) The merging organizations must choose a name for the merged organization unless both organizations agree to operate under the name of one of the existing organizations.

(3) The merged organization must file the following documents with the director of the Texas Crime Stoppers Council (Council) requesting certification under a new name (if applicable) and with the expanded geographic territory or jurisdiction:

(A) All required Texas Secretary of State, Texas Comptroller, and United States Internal Revenue Service (IRS) required forms and documentation for mergers and dissolutions, as applicable;

(B) IRS compliance documents for dissolution of a 501(c)(3) non-profit corporation and a 501(c)(3) letter authorizing the organization to operate under the new name (if applicable);

(C) Texas Secretary of State compliance documents for 501(c)(3) non-profit corporations;

(D) Application for Continuing Certification under the new name (if applicable) and with an expanded geographic territory or jurisdiction;

(E) Copies of financial reviews of the restricted court fees accounts for the certified crime stoppers organization as required in §414.010(b), Texas Government Code; these financial reviews must be conducted by a Certified Public Accountant;

(F) Copies of financial reviews of all bank accounts held by the non-certified 501(c)(3) crime stoppers organization; these financial reviews must be conducted by a Certified Public Accountant;

(G) If the financial review establishes that at any time the non-certified 501(c)(3) crime stoppers organization was certified by the Council and received court fees under Articles 42.12, 37.073 and 42.152, Texas Code of Criminal Procedure, and failed to return all court fees to the state comptroller within 60 days following the loss of certification, as required by §414.010(c), Texas Government Code, a copy of the check for the outstanding court fees, made payable to the Office of the Comptroller, must be submitted with the application for certification;

(H) Copy of board of directors membership list of the merged organization, to include contact information for board mem-

bers, the law enforcement coordinator, and executive director (if applicable);

(I) Copies of letters from the community supervision and corrections departments (CSCD) detailing the amount of court fees paid to the certified crime stoppers organization during the previous two years, up to and including the date of the proposed merger, under the provisions of Articles 42.12, 37.073 and 42.152, Texas Code of Criminal Procedure;

(J) Training certificates showing that at least one board member, the law enforcement coordinator, and an executive director (if applicable) received training as authorized by the Council within the 12-month period preceding the merger;

(K) Copies of Probation Fee and Repayment Reports for the certified crime stoppers organization for the previous two calendar years as specified by §414.010(a), Texas Government Code;

(L) Copies of the minutes of the boards of directors meetings of the certified crime stoppers organization and the non-certified 501(c)(3) crime stoppers organization in which the boards voted to merge their organizations; and

(M) Copy of a cooperative agreement or memorandum of understanding (MOU) between the merged organizations regarding the merger and a copy of each organization's minutes of the board of directors for the meeting where the agreement or MOU is approved.

(4) If the director of the Council determines that the merged organization meets all requirements of this section, the merged organization will be presented to the Council for certification at the Council's next regularly scheduled meeting.

(5) Once the Council grants certification, the merged organization may merge or consolidate the separate rewards accounts of the merged organizations. The merged organization also will be eligible to apply to the relevant CSCDs to receive court fees under the provisions of Articles 42.12, 37.073, and 42.152, Code of Criminal Procedure.

(6) The merged organization's "Excess Funds Account," as defined in §414.01(d) of the Texas Government Code, may only be comprised of those funds that were previously in each individual organization's "Excess Funds Account." Three years from the merged organization's certification date, the merged organization may establish an "Excess Funds Account" in accordance with §414.01(d) of the Texas Government Code.

(7) The certification is valid for a period of two years.

[(a) The certified Crime Stoppers program that wants to merge with a non-certified 501(c)(3) crime stoppers program must have contiguous borders.]

[(b) The participating programs must develop a cooperative agreement or memorandum of understanding (MOU) regarding the merger; each program's Board of Directors must vote to approve the cooperative agreement or MOU.]

[(c) The merging programs must choose a name for the new program unless both programs agree to operate under the name of one of the existing programs.]

[(d) The newly established program must file the following documents with the Director of the Texas Crime Stoppers Council requesting Certification under a new name and with an expanded geographical territory:]

[(1) United States Internal Revenue Service (IRS) compliance documents for dissolution of a 501(c)(3) non-profit corporation

and a 501(c)(3) letter authorizing the program to operate under the new name;]

[(2) Texas Secretary of State compliance documents for 501(c)(3) non-profit corporations;]

[(3) Application for Continuing Certification under the new name and with an expanded geographical territory;]

[(4) Copies of financial reviews of the restricted court fees accounts for the certified Crime Stoppers program as required in §414.010(b), Texas Government Code; these financial reviews must be conducted by a Certified Public Accountant;]

[(5) Copies of financial reviews of all bank accounts held by the non-certified 501(c)(3) Crime Stoppers program; these financial reviews must be conducted by a Certified Public Accountant;]

[(6) If the financial review establishes that at any time the non-certified 501(c)(3) Crime Stoppers program was certified by the Crime Stoppers Council and received court fees under Articles 42.12, 37.073 and 42.152, Code of Criminal Procedure, and failed to return all court fees to the Office of the Comptroller, State of Texas, within 60 days following the loss of certification, as required by §414.010(e), Texas Government Code, a copy of the check for the outstanding court fees, made payable to the Office of the Comptroller, must be submitted with the application for certification;]

[(7) Copy of Board of Directors membership list of the new program; to include contact information for Board members and the law enforcement coordinator;]

[(8) Copies of letters from the Community Supervision and Corrections Departments (CSCD) detailing the amount of court fees paid to the certified Crime Stoppers program during the previous two years, up to and including the date of the proposed merger, under the provisions of Articles 42.12, 37.073 and 42.152, Code of Criminal Procedure;]

[(9) Training certificates showing that at least one Board member, the law enforcement coordinator, and an executive director (if applicable) received training as authorized by the Texas Crime Stoppers Council within the 12-month period preceding the merger;]

[(10) Copies of Probation Fee and Repayment Reports for the certified Crime Stoppers program for the previous two calendar years as specified by §414.010(a), Texas Government Code;]

[(11) Copies of the Minutes of the Boards of Directors meetings of the certified Crime Stoppers program and the non-certified 501(c)(3) Crime Stoppers program in which the Boards voted to merge their programs; and]

[(12) A letter addressed to the Texas Crime Stoppers Council stating that the new program will follow all rules applicable to the operations of Multi-County Programs as stated in the Standard Operating Procedures Manual of the Texas Crime Stoppers Council.]

[(e) If the Director of the Texas Crime Stoppers Council determines that the new program meets all requirements in subsections (a) - (d) of this section, the program will be presented to the Council for certification at the Council's next regularly scheduled meeting.]

[(f) Once the Council grants certification, the new program can merge the bank accounts of both programs. The new program also will be eligible to apply to the relevant CSCDs to receive court fees under the provisions of Articles 42.12, 37.073, and 42.152, Code of Criminal Procedure.]

[(g) The new program is not eligible to establish an "Excess Funds Account" under the provisions of §414.010(d); Texas Government Code, until three years from the certification date.]

[(h) The certification is valid for a period of two years.]

[(i) All certified programs, regardless of the date on which any existing mergers occurred, must comply with these rules upon recertification.]

*§3.9021. Addition of Geographic Territories or [Geographical] Jurisdictions to Certified Organizations [Programs].*

(a) If a geographic territory or jurisdiction wants to join an existing certified crime stoppers organization, the following procedures must be followed: [If a county or city that is not presently served by a certified Crime Stoppers program wants to join an existing certified Crime Stoppers program, the following procedures must be followed:]

(1) The county or city must share contiguous borders with the certified crime stoppers organization [Crime Stoppers program];

(2) The certified crime stoppers organization and the geographical entity that is requesting to join the crime stoppers organization must choose a new name for the organization unless both parties agree to operate under the name of the existing organization; [A citizens' delegation from the county or city must meet with the Board of Directors of the certified Crime Stoppers program to develop an operational agreement or Memorandum of Understanding (MOU); the Board of Directors of the certified program must vote to accept the geographical entity making the request;]

(3) The certified crime stoppers organization must file the following documents with the director of the Texas Crime Stoppers Council (Council) requesting certification under a new name (if applicable) and with an expanded geographic territory or jurisdiction: [The certified Crime Stoppers program and the geographical entity that is requesting to join the Crime Stoppers program must choose a new name for the program unless both parties agree to operate under the name of the existing program;]

(A) United States Internal Revenue Service (IRS) letter for a 501(c)(3) corporation authorizing the organization to operate under a new name, if applicable;

(B) Texas Secretary of State letter for a 501(c)(3) corporation authorizing the organization to operate under a new name (if applicable);

(C) Application for Continuing Certification under the new name (if applicable) and with an expanded geographic territory or jurisdiction;

(D) Copies of a financial review of all bank accounts for the certified crime stoppers organization as required in §3.9000(f)(1) of this chapter;

(E) Copy of board of directors membership list for the organization, to include contact information for board members, the law enforcement coordinator, and executive director (if applicable);

(F) Copies of letters from the community supervision and corrections departments (CSCD) detailing the amount of court fees paid to the certified organization during the previous two years, under the provisions of Articles 42.12, 37.073 and 42.152, Texas Code of Criminal Procedure;

(G) Training certificates showing that at least one board member, the law enforcement coordinator, and an executive director (if applicable) received training as authorized by the Council within the 12-month period preceding the new Application for Continuing Certification;

(H) Copies of Probation Fee and Repayment Reports for the certified crime stoppers organization for the previous two calendar years as specified by §414.010(a), Texas Government Code;

(I) Copy of the minutes of the board of directors of the certified crime stoppers organization in which the board voted to add the new geographical entity to the territory or jurisdiction served by the crime stoppers organization; and

(J) Written documentation from citizens of the geographic territory or jurisdiction showing an interest in joining an existing crime stoppers organization.

(4) If the director of the Council determines that the newly expanded organization meets all requirements listed in paragraphs (1) - (3) of this subsection, the expanded organization will be presented to the Council for certification at the Council's next regularly scheduled meeting. The Council may grant expanded certification at its discretion. [The certified Crime Stoppers program must file the following documents with the Director of the Texas Crime Stoppers Council requesting certification under a new name (if applicable) and with an expanded geographical territory:]

[(A) United States Internal Revenue Service (IRS) letter for a 501(c)(3) corporation authorizing the program to operate under a new name, if applicable;]

[(B) Texas Secretary of State letter for a 501(c)(3) corporation authorizing the program to operate under a new name, if applicable;]

[(C) Application for Continuing Certification under the new name (if applicable) and with an expanded geographical territory;]

[(D) Copies of a financial review of all bank accounts for the certified Crime Stoppers program as required in §3.9000(d)(6)(A) of this chapter;]

[(E) Copy of Board of Directors membership list for the program, to include contact information for Board members and the law enforcement coordinator;]

[(F) Copies of letters from the Community Supervision and Corrections Departments (CSCD) detailing the amount of court fees paid to the certified program during the previous two years, under the provisions of Articles 42.12, 37.073 and 42.152, Code of Criminal Procedure;]

[(G) Training certificates showing that at least one Board member, the law enforcement coordinator, and an executive director (if applicable) received training as authorized by the Crime Stoppers Council within the 12-month period preceding the new application for Continuing Certification;]

[(H) Copies of Probation Fee and Repayment Reports for the certified Crime Stoppers program for the previous two calendar years as specified by §414.010(a); Texas Government Code;]

[(I) Copy of the Minutes of the Board of Directors of the certified Crime Stoppers program in which the Board voted to add the new geographical entity to the territory served by the Crime Stoppers program; and]

[(J) A letter addressed to the Council stating that the program will follow all rules applicable to the operations of Multi-County Programs as stated in the Standard Operating Procedures Manual of the Texas Crime Stoppers Council.]

(5) Once the Council grants certification, the organization will be eligible to apply to the CSCDs in the newly acquired geographic territory or jurisdiction to receive court fees under the provisions of



Articles 42.12, 37.073 and 42.152, Texas Code of Criminal Procedure. [If the Director of the Council determines that the newly expanded program meets all requirements listed in paragraphs (1) - (4) of this section, the program will be presented to the Council for certification at the Council's next regularly scheduled meeting.]

(6) The certification is valid for a period of two years. [Once the Council grants certification, the program will be eligible to apply to the CSCDs in the newly acquired geographical territory to receive court fees under the provisions of Articles 42.12, 37.073 and 42.152, Code of Criminal Procedure.]

{(7) The certification is valid for a period of two years.}

{(8) All certified programs, regardless of the date on which any existing mergers occurred, must comply with these rules upon recertification.}

(b) If a certified or non-certified organization serves the geographic area to which a certified organization is attempting to expand, the expanding organization must send written notice to the Council and to the organization serving the geographic area to which it intends to expand of its intent to serve that area.

§3.9023. Transfer of Assets of Funds.

A certified crime stoppers organization is not permitted to receive separate rewards accounts from a certified or non-certified organization. These separate rewards accounts may be transferred only in cases where the two organizations merge as described in §3.9017 or §3.9019 of this chapter. This section does not apply to individual reward payments made by one certified organization on behalf of another certified organization.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2011.

TRD-201101136

David Zimmerman

Assistant General Counsel

Office of the Governor

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 463-1919



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

#### 1 TAC §355.701, §355.702

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Health and Human Services Commission (HHSC) proposes to repeal §355.701, concerning definitions and gen-

eral specifications, and §355.702, concerning method of cost determination, in Chapter 355, Subchapter F, Reimbursement Methodology for Programs Serving Persons with Mental Illness and Mental Retardation.

#### Background and Justification

The repeal of these rules is proposed because the content is incorporated in the rules in Chapter 355, Reimbursement Process, Subchapter A, Cost Determination Process. Providers of programs serving persons with mental illness and mental retardation that submit cost reports will use the cost determination process rules in Chapter 355, Subchapter A as guidance regarding the reporting of cost. The repeals will delete redundant and obsolete rules.

#### Section-by-Section Summary

The repeals remove redundant information included in another section in the Texas Administrative Code and obsolete information.

#### Fiscal Note

Gordon Taylor, Chief Financial Officer of the Department of Aging and Disability Services, has determined that during the first five-year period the proposed repeals are in effect, there is no fiscal impact to costs or revenues of state or local governments.

#### Small Business and Micro-business Impact Analysis

Carolyn Pratt, Director of Rate Analysis, has determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed repeals, because the repeals will not require them to alter their business practices. There is no anticipated economic cost to persons who are required to comply with the proposed repeals. There is no anticipated effect on local employment in geographic areas affected by these repeals.

#### Public Benefit

Carolyn Pratt has also determined that for the first five years the proposed repeals are in effect, the public will benefit from the adoption of the repeals by having duplicate and obsolete rules removed from HHSC's rule base.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

#### Public Comment

Written comments on the proposal may be submitted to James Jenkins in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC H-400,

Austin, TX 78708-5200; by fax to (512) 491-2865; or by e-mail at james.jenkins@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

#### Statutory Authority

The repeals are proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The repeals affect the Human Resources Code Chapter 32, and the Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.701. *Definitions and General Specifications.*

§355.702. *Method for Cost Determination.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2011.

TRD-201101115

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 424-6900



## TITLE 22. EXAMINING BOARDS

### PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

#### CHAPTER 75. RULES OF PRACTICE

##### 22 TAC §75.11

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §75.11, concerning the schedule of sanctions. The proposal moves "Failure to Respond to Board Inquiries" from Category IV to Category I and moves "Failure to Report Criminal Conviction" from Category V to Category I. Additionally, the proposal adds "Practicing Outside the Scope of Practice of Chiropractic" to the Maximum Sanctions Table as a Category I offense.

The Enforcement Committee has noted an increasing number of cases where a Respondent in an enforcement action does not respond to Board inquiries, as required by §75.6, or the Respondent does not report a criminal conviction to the Board, as required by §75.3(f). Therefore, the Board feels that increasing penalties by moving the offenses to Category I will deter Respondents from failing to respond and failing to report criminal convictions.

Additionally, the Board proposes adding "Practicing Outside the Scope of Practice of Chiropractic" to the Table as a Category I offense. Currently, this offense is not specifically detailed in the Table. In the interest of ensuring licensed chiropractors are aware of the specific penalties for practicing outside the scope

of practice as defined by Board rules and Chapter 201 of the Occupations Code, the Board proposes adding this offense to the Table.

Glenn Parker, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for local government as a result of enforcing or administering the amendment. The fiscal implication for state government as a result of enforcing or administering the amendment includes increased revenue from the collection of any administrative penalties imposed in accordance with this proposed amendment.

Mr. Parker also has determined that, for each year of the first five years the amendment is in effect, the public benefit of the proposed amendment will be protection of patients entering into a prepaid treatment plan with a licensee. This proposed amendment ensures that licensees take seriously the requirements and restrictions imposed by the Chiropractic Act and Board rules. Mr. Parker has also determined that there will be no adverse economic effect to individuals and small or micro business during the first five years this amendment will be in effect.

Comments on the proposed amendment may be submitted to Glenn Parker, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Suite 3-825, Austin, Texas 78701, fax: (512) 305-6705, no later than 30 days from the date that this rule is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code, §201.152, relating to rules, and §201.503, relating to schedule of sanctions. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.153 requires the Board to adopt a schedule of the maximum amount of sanctions that may be assessed against a licensee for each category of violation of Chapter 201 of the Occupations Code.

No other statutes, articles, or codes are affected by this proposed amendment.

§75.11. *Schedule of Sanctions.*

(a) (No change.)

(b) The following table contains maximum sanctions that may be assessed for each category of violation listed in the table:

Figure: 22 TAC §75.11(b)

(c) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 14, 2011.

TRD-201101044

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 305-6716



## CHAPTER 77. ADVERTISING AND PUBLIC COMMUNICATION

## 22 TAC §77.2

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §77.2, concerning Publicity, to require licensees who use the phrase "Board Certified" or similar terminology in any form of public communication to identify in that communication the board certifying said credentials. Clear identification of credentials will make it easier for the public and the Board to evaluate a licensee's qualifications. It will also prevent false, misleading or deceptive advertising regarding a licensee's qualifications.

Glenn Parker, Executive Director, has determined that, for each year of the first five years that this amendment will be in effect, there will be no additional cost to state or local governments.

Mr. Parker has also determined that, for each year of the first five years that this amendment will be in effect, the public benefit of this amendment will be clear identification of the board certifying credentials of licensees so that the public can easily assess a licensee's qualifications. Mr. Parker has also determined that there will be no adverse economic effect to individuals and small or micro businesses during the first five years that this amendment will be in effect.

Comments on the proposed amendment and/or a request for a public hearing on the proposed amendment may be submitted to Glenn Parker, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701, fax: (512) 305-6705, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §201.152, relating to rules and §201.155, relating to restrictions on advertising. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.155 states that the Board may adopt rules restricting advertising to prohibit false, misleading or deceptive practices.

No other statutes, articles, or codes are affected by the proposed amendment.

### §77.2. *Publicity.*

(a) - (f) (No change.)

(g) In any form of public communication using the phrase "Board Certified" or similar terminology associated with any credentials, a licensee must identify the board certifying said credentials.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 14, 2011.

TRD-201101045

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 305-6716



## 22 TAC §77.5

The Texas Board of Chiropractic Examiners (Board) proposes new §77.5, concerning untrue or misleading claims in advertisements for chiropractic services. The proposed new rule clearly

prohibits certain claims in advertisements for chiropractic services and states what is considered to be a "false, deceptive, unfair or misleading" advertisement.

Glenn Parker, Executive Director, has determined that, for each year of the first five years this new rule will be in effect, there will be no additional cost to state or local governments.

Mr. Parker has also determined that, for each year of the first five years this new rule will be in effect, the public benefit of this new rule will be greater protection for the public by clearly prohibiting misleading claims by anyone advertising chiropractic services. Mr. Parker has also determined that there will be no adverse economic effect to individuals and small or micro business during the first five years this new rule will be in effect.

Comments on the proposed new rule and/or a request for a public hearing on the proposed new rule may be submitted to Glenn Parker, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705, no later than 30 days from the date that this proposed new rule is published in the *Texas Register*.

The new rule is proposed under Texas Occupations Code §201.152, relating to rules, and §201.155, relating to restrictions on advertising. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.155 authorizes the Board to restrict false, misleading, or deceptive advertising.

No other statutes, articles, or codes are affected by the proposed new rule.

### §77.5. *Misleading Claims.*

A person advertising chiropractic services shall not use false, deceptive, unfair or misleading advertising, including, but not limited to, claims that chiropractic services:

(1) cure or lessen the effects of ailments, injuries or other disorders of the human body which are outside the scope of chiropractic practice as defined by Chapter 201 of the Occupations Code and these rules; or

(2) offer results that are not within the realm of scientific proof beyond testimonial statements or manufacturer's claims.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 14, 2011.

TRD-201101043

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 305-6716



## CHAPTER 78. CHIROPRACTIC RADIOLOGIC TECHNOLOGISTS

### 22 TAC §78.1

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §78.1, concerning Registration of Chiropractic Radiologic Technologists, to remove the requirement that a Radiologic Technologist show proof of continuing education to

the Board upon renewal. Radiologic Technologists are required to register with the Department of State Health Services (DSHS) and must show proof of continuing education to DSHS. The requirement to show proof to the Board and for the Board to monitor compliance duplicates the efforts of DSHS and puts an unnecessary burden on Board staff. The Board needs only require a Radiologic Technologist to provide proof that he/she is currently registered with DSHS or that the Doctor of Chiropractic (D.C.) employing the Radiologic Technologist has a current hardship exemption approved by DSHS.

Additionally, the proposed amendment will remove references to the Texas Department of Health (TDH), which has been renamed the Department of State Health Services (DSHS).

Glenn Parker, Executive Director, has determined that, for each year of the first five years that this amendment will be in effect, there will be no additional cost to state or local governments.

Mr. Parker has also determined that, for each year of the first five years that this amendment will be in effect, the public benefit of this amendment will be the streamlining of the registration process for Radiologic Technologists in the state of Texas. Mr. Parker has also determined that there will be no adverse economic effect to individuals and small or micro businesses during the first five years that this amendment will be in effect.

Comments on the proposed amendment and/or a request for a public hearing on the proposed amendment may be submitted to Glenn Parker, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701, fax: (512) 305-6705, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §201.152, relating to rules and §201.452, relating to use of x-rays. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.452 states that the Board may require evidence of proper training and safety in the use of analytical and diagnostic x-ray.

No other statutes, articles, or codes are affected by the proposed amendment.

*§78.1. Registration of Chiropractic Radiologic Technologists.*

(a) (No change.)

(b) Eligibility. An applicant for registration must either:

(1) submit proof of the applicant's registry with the Texas Department of State Health Services (DSHS) [Texas Department of Health (TDH)] and completion of training and instruction as required by 25 TAC §140.518 (relating to Mandatory Training Programs for Non-Certified Technicians) [§143.17 (concerning mandatory training programs for non-certified technicians)]; or

(2) perform radiologic procedures for a licensee to whom a hardship exemption was granted by DSHS [the TDH] within the previous 12 months under 25 TAC §140.520 (relating to Hardship Exemptions) [§143.19 (concerning hardship exemptions)].

(c) (No change.)

(d) Renewal. On or before January 1 of each year, a CRT shall renew his or her registration, by submitting:

(1) a registration application;

(2) the radiologic technologist application fee as provided in §75.7 of this title (relating to Fees and Charges [for Public Information]); and

(3) proof of renewal status as provided in subsection (b) of this section.]; and]

[(4) proof of completion of continuing education or enrollment in mandatory training and instruction as provided by subsection (i) of this section.];

(e) - (f) (No change.)

(g) DSHS [TDH] authorization. A person may not perform radiologic procedures if that person is removed from the DSHS [TDH] registry or the hardship exemption under which the person is working is expired or revoked even if the person holds a valid CRT registration with the board. A CRT must provide to the board a copy of a hardship exemption granted by DSHS [the TDH] within five days of its issuance if the exemption is granted prior to the registration renewal deadline.

(h) Disciplinary sanctions. The board may refuse to issue or renew, suspend, or revoke a CRT registration and/or impose an administrative penalty for the following:

(1) violation of the rules or an order of the board;

(2) violation of the Medical Radiologic Technologist Certification Act;

(3) violation of the rules or an order of DSHS [the TDH];

(4) violation of the Texas Chiropractic Act; or

(5) nonpayment of registration fees.

[(i) Continuing education. A CRT shall complete six clock hours of continuing education each year in order to renew his or her registration. The continuing education required by this subsection shall meet the requirements of the rules of the TDH relating to continuing education for medical radiologic technologists. No continuing education will be required for any year in which a CRT is enrolled for the mandatory training and instruction program required by 25 TAC §143.17 (concerning mandatory training programs for non-certified technicians).];

(i) [(j)] DSHS [TDH] compliance. All registrants shall comply with the rules of DSHS [the TDH] for the control of radiation.

(j) [(k)] Supervision required. A CRT shall perform radiological procedures only under the supervision of a licensee physically present on the premises.

(k) [(h)] Cineradiography. Procedures that include cineradiography are limited to use by a licensee who has passed a course in its use, approved by the board.

(l) [(m)] Non-static procedures. Any non-static procedure has the potential to be more dangerous and hazardous and by definition may only be performed by a licensee or a certified medical radiologic technologist.

(m) [(n)] Licensee responsibility. A licensee shall not authorize or permit a person:

(1) who is not registered under this section to perform radiologic procedures on a patient unless otherwise authorized under the Medical Radiologic Technologist Act or 25 TAC Chapter 140, Subchapter J (relating to Medical Radiologic Technologists) [Chapter 143 (concerning medical radiologic technologists)]; or

(2) to perform radiologic procedures on a patient if that person has been removed from the registry of DSHS [~~the TDB~~] or the licensee's hardship exemption has been revoked or has expired.

(n) [~~o~~] Licensee compliance. A licensee shall comply with the Medical Radiological Technologist Certification Act and all applicable rules of DSHS [~~the TDB~~].

(o) [~~p~~] Laws governing disciplinary action. Disciplinary action against a CRT, including the imposition of administrative penalties, is governed by the Administrative Procedure Act, Government Code, Chapter 2001, and applicable enforcement provisions of the Texas Chiropractic Act, Occupations Code, Chapter 201, including Subchapters K through M.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 14, 2011.

TRD-201101042

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 305-6716



## PART 9. TEXAS MEDICAL BOARD

### CHAPTER 183. ACUPUNCTURE

#### 22 TAC §183.20, §183.24

The Texas Medical Board (Board) proposes amendments to §183.20, concerning Continuing Acupuncture Education, and new §183.24, concerning Procedure.

The amendment to §183.20 expands the scope of acceptable Continuing Acupuncture Education (CAE) to include courses approved by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) for professional development activity credit and courses that are provided outside of the United States by a provider of continuing acupuncture education that are acceptable to the Board.

New §183.24 provides that the procedural rules under Chapter 187 shall be applied to acupuncturists.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to provide licensed acupuncturists with more opportunities to take CAE for credit offered by providers outside of Texas that have been determined acceptable by the Board and to ensure consistency in application of Board procedures to licensees and that due process and sufficient notice are provided to licensees.

Mrs. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposals may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment and new rule are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment and new rule are also authorized by §205.255, Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

§183.20. *Continuing Acupuncture Education.*

(a) (No change.)

(b) Minimum Continuing Acupuncture Education. As a prerequisite to the annual registration of the license of an acupuncturist, the acupuncturist shall complete 17 hours of continuing acupuncture education (CAE) each year.

(1) The required hours shall be from courses that meet one of the following criteria at the time the hours are taken:

(A) are designated or otherwise approved for credit by the Texas State Board of Acupuncture Examiners [~~at the time the courses were taken~~] based on a review and recommendation of the course content by the Education Committee of the board as described in subsection (n) of this section;

(B) are offered by approved providers; [~~or~~]

(C) have been approved for CAE credit for a minimum of three years by another state acupuncture board having first gone through a formal approval process; [~~or~~]

(D) approved by the NCCAOM (National Certification Commission for Acupuncture and Oriental Medicine) for professional development activity credit; or

(E) are provided outside of the United States by a provider of continuing acupuncture education that are acceptable to the Board.

(2) At least eight hours shall be in general acupuncture in order to ensure that a licensee's CAE is comprehensive and that the licensee's overall acupuncture knowledge, skills, and competence are enhanced.

(3) At least one of the required hours shall be from a course in ethics.

(4) At least two of the required hours shall be in herbology. More than two hours shall be expected of a licensee whose primary practice includes prescriptions of herbs.

(5) Effective for licensees applying for renewal of their licenses on or after November 30, 2010, at least one hour of biomedicine.

(6) No more than two of the required hours may be from courses that primarily relate to practice enhancement or business or office administration.

(7) Courses may be taught through live lecture, distance learning, or the Internet.

(8) No more than a total of eight hours completed under only paragraph (1)(D) or (E) of this subsection may be applied to the total hours required each registration period.

(c) - (v) (No change.)

§183.24. Procedure.

Chapter 187 of this title (relating to Procedural Rules) shall govern procedures relating to acupuncturists where applicable. If the provisions of Chapter 187 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 18, 2011.

TRD-201101111

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 305-7016



## PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

### CHAPTER 329. LICENSING PROCEDURE

#### 22 TAC §329.2

The Texas Board of Physical Therapy Examiners proposes amendments to §329.2, concerning License by Examination. The amendments would correct misplaced decimal points in the table showing additional education. The changes should have occurred when changes were made to the abbreviation for Continuing Competence Units (CCUs).

John P. Maline, Executive Director, has determined that for the first five-year period these amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering these amendments.

Mr. Maline has also determined that for each year of the first five-year period these amendments are in effect the public benefit will be clearer guidelines for applicants who must do additional education to retake the national exam. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendment. There are no anticipated costs to individuals who are required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: [nina.hurter@ptot.texas.gov](mailto:nina.hurter@ptot.texas.gov). Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by these amendments.

§329.2. License by Examination.

(a) - (e) (No change.)

(f) Re-examination.

(1) First re-examination. An applicant who fails the exam the first time is eligible to take the examination a second time after submitting a re-exam application and fee.

(2) Second or subsequent re-examination. An applicant who fails the exam twice or more must complete additional education before taking the exam again. The amount of additional education is set forth in the attached chart. To be eligible to register for the exam again, the applicant must submit a letter that identifies the area(s) of weakness and describes the plan that addresses the weakness(s). The letter must be accompanied by proof that the additional education has been successfully completed. Additional education may be one or more of the following:

(A) A commercial review course.

(B) An individual tutorial. The completed tutorial must be signed by the tutor and notarized, and include the tutor's curriculum vitae. If the applicant is applying for a PT license, the tutor must be a licensed PT. If the applicant is applying for a PTA license, the tutor must be a licensed PT, or a licensed PTA who is associated with a Texas PTA program.

(C) Board-approved continuing competence (CCU) activities.

Figure: 22 TAC §329.2(f)(2)(C)

[Figure: 22 TAC §329.2(f)(2)(C)]

(3) A person who is currently licensed in good standing in another state and who must retake the national exam to meet Texas score requirements is not required to complete additional education.

(g) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 14, 2011.

TRD-201101047

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 305-6900



## CHAPTER 347. REGISTRATION OF PHYSICAL THERAPY FACILITIES

#### 22 TAC §347.9

The Texas Board of Physical Therapy Examiners proposes an amendment to §347.9, concerning Renewal of Registration. The amendment would clarify in rule that a facility for which the renewal process is completed online prior to the expiration of the registration may use the printed transaction receipt in lieu of the certificate for the period of time specified on the receipt.

John P. Maline, Executive Director, has determined that for the first five-year period this amendment is in effect there will be no

additional costs to state or local governments as a result of enforcing or administering this amendment.

Mr. Maline has also determined that for each year of the first five-year period this amendment is in effect the public benefit will be a more efficient facility registration process. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendment. There are no anticipated costs to individuals who are required to comply with the amendment as proposed.

Comments on the proposed amendment may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: [nina.hurter@ptot.texas.gov](mailto:nina.hurter@ptot.texas.gov). Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by this amendment.

§347.9. *Renewal of Registration.*

(a) - (d) (No change.)

(e) The facility renewal certificate must be displayed with the original certificate and is the property of the board. A facility for which the renewal process is completed online prior to the expiration of the registration may use the printed transaction receipt in lieu of the certificate for the period of time specified on the receipt.

(f) A facility will be allowed to renew without a late fee if the renewal application and fee are received prior to the expiration date. However, ~~the renewal will not be considered complete and the board will not issue the renewal certificate prior to the receipt of the signed physical therapist in charge form and a list of the name(s) of the PTs and PTAs working at that facility.~~ Physical therapy services may not be provided at the facility until the certificate is displayed in a prominent location in the facility where it is available for inspection by the public.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 14, 2011.

TRD-201101046

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 305-6900



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

## CHAPTER 415. PROVIDER CLINICAL RESPONSIBILITIES--MENTAL HEALTH SERVICES

### SUBCHAPTER G. DETERMINATION OF MANIFEST DANGEROUSNESS

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§415.301 - 415.315 and the repeal of §415.316, concerning the Determination of Manifest Dangerousness.

#### BACKGROUND AND PURPOSE

The amendments and repeal are necessary to comply with Health and Safety Code, §533.035(a) and §574.022; and Code of Criminal Procedure, Articles 46B and 46C, which require the department to operate a maximum security unit for individuals determined to be manifestly dangerous.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 415.301 - 415.316 have been reviewed and the department has determined that amendments were necessary to conform the proposed rules to statute and current department operations. The department has determined that reasons for adopting the rules continue to exist because rules on this subject are needed. However, §415.316 is no longer necessary and is being repealed.

#### SECTION-BY-SECTION SUMMARY

Amendments to §415.301 include minor editorial revisions. An amendment to §415.302 revises a rule reference to §415.306(8) and removes mental retardation facility from the applicable facilities in the proposed rule. Amendments to §415.303 define the terms and phrases used in the proposed rule relating to the assessment of risk for manifest dangerousness, commissioner, the department, the dangerousness review board, facility, hearing, mental health professional, and maximum security unit. Section 405.303 also removes the definitions of state mental retardation facility, TDMHMR, and the TDMHMR Review Board. An amendment to §415.304 and §415.315 revise the reference of Health and Safety Code, §593.044 to §574.022. Amendments to §§415.303, 415.305, 415.306, and 415.310 - 415.314 remove any references to TDMHMR and replace with DSHS. Amendments to §415.307 and §415.310 clarify that an assessment tool can be used to assess a risk of manifest dangerousness. Amendments to §415.308 and §415.309 revise the titles of the rules. Amendments to §§415.310, 415.312, and 415.314 remove the requirement for the Letter of Attestation. Amendments to §§415.303, 415.310, 415.312, and 415.315 correct the Code of Criminal Procedure Article references. Section 415.314 is also amended to include access of the Notice of Hearing by Facility Review Board and the Notice of Hearing by DSHS Dangerousness Review Board forms as an attached graphic. The repeal of §415.316 will remove the requirement for distribution of the rules of this subchapter.

#### FISCAL NOTE

Michael Maples, Assistant Commissioner, Mental Health and Substance Abuse Division, has determined that for each year of the first five-year period that the sections are in effect, there

will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Maples has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

In addition, Mr. Maples has determined that for each year of the first five years the sections are in effect the public will benefit as a result of the repeal of these rules because unnecessary rules will be eliminated while maintaining continued protection of the public health, welfare, and safety. Removal of the requirement for the Letter of Attestation will eliminate unnecessary administrative burdens and increase clinician's time for clinical care. Finally, use of standardized assessment tools would help create more consistent results determinations from the review board.

#### REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state.

#### TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments and repeal do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Nnenna Ezekoye, Mental Health and Substance Abuse Division, Department of State Health Services, Mail Code 2023, P.O. Box 149347, Austin, Texas 78714-9347, (512) 206-5268, or by email to Nnenna.Ezekoye@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication of the proposal in the *Texas Register*. The meeting date and location will be posted on the Behavioral Health Medical Director website (<http://www.dshs.state.tx.us/mhsa/medicaldirector/>) and the Mental Health and Substance Abuse Division Website (<http://www.dshs.state.tx.us/mentalhealth.shtm>).

Please contact Nnenna Ezekoye at (512) 206-5268 or Nnenna.Ezekoye@dshs.state.tx.us if you have questions.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### 25 TAC §§415.301 - 415.315

#### STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §571.006, which provides the Executive Commissioner of the Health and Human Services Commission with the authority to adopt rules as necessary for the proper and efficient treatment of persons with mental illness; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The amendments affect the Health and Safety Code, Chapters 531, 533, 571, 574, and 1001; and Code of Criminal Procedure, Articles 46B and 46C.

#### §415.301. Purpose.

The purpose of this subchapter [is to]:

- (1) establishes [establish] the two types of review boards that conduct hearings to determine whether an individual is manifestly dangerous;
- (2) defines [define] the elements to be considered in the determination of manifest dangerousness by review boards;
- (3) describes [describe] which persons may and may not be subject to a hearing to determine manifest dangerousness;
- (4) enumerates [enumerate] the rights of an individual who is subject to a hearing to determine manifest dangerousness;
- (5) provides [provide] due process for individuals who have been determined manifestly dangerous; and
- (6) provides [provide] procedures governing the transfer of an individual to the maximum security unit/secure adolescent unit (MSU/SAU) and from the MSU/SAU.

#### §415.302. Application.

[(a)] This subchapter applies to facilities, as defined in §415.303(8) [§415.303(6)] of this title (relating to Definitions).

[(b)] Sections 415.312 and 415.310(5) of this subchapter apply to a state mental retardation facility that is identified as the receiving facility, as defined in §415.303(19) of this title (relating to Definitions).]

#### §415.303. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

- (1) - (2) (No change.)
- (3) Assessment of risk for manifest dangerousness--An age and developmentally appropriate comprehensive evaluation of the commonly accepted risk factors for violence and the results of



evidence based tools that assess and/or measure risk of violence. [behavioral and social factors that may indicate an individual is manifestly dangerous, including:]

~~[(A) past history of violence including:]~~

~~[(i) history of violence in family of origin;]~~

~~[(ii) past use of violence;]~~

~~[(iii) at risk behavioral traits;]~~

~~[(iv) organic brain disease affecting perception;]~~

~~[(v) impulse control or arousal thresholds; and]~~

~~[(vi) history of violent behavior when chronically institutionalized;]~~

~~[(B) situational factors related to violent acts;]~~

~~[(C) environmental factors related to risk for violence;]~~

~~[(D) factors identified in the current mental status examination related to risk for violence;]~~

~~[(E) analysis of the level of external controls needed to ensure the continuity of safe and effective treatment; and]~~

~~[(F) summary and formulation of the elements contained in subparagraphs (A)-(E) of this paragraph.]~~

(4) (No change.)

(5) Commissioner--The commissioner of the Texas Department of State Health Services ~~[Mental Health and Mental Retardation]~~ or designee.

(6) DSHS--The Texas Department of State Health Services.

(7) DSHS Dangerousness Review Board (DRB)--Five mental health professionals impaneled in accordance with §415.305(e) of this title (relating to Procedures and Requirements for All Review Boards) to conduct a hearing to determine whether or not an individual served in the MSU/SAU is manifestly dangerous.

(8) ~~[(6)]~~ Facility--Any state hospital, or a state center with an inpatient component, that is operated by DSHS ~~[TDMHMR]~~, excluding Waco Center for Youth.

(9) ~~[(7)]~~ Facility CEO (chief executive officer)--The superintendent or director of a facility or his/her designee.

(10) ~~[(8)]~~ Facility review board--Five mental health professionals impaneled in accordance with §415.305(e) of this title ~~[(relating to Procedures and Requirements for All Review Boards)]~~ to conduct a hearing to determine whether or not an individual served in a facility is manifestly dangerous.

(11) ~~[(9)]~~ Hearing--An oral proceeding conducted by a review board in accordance with §415.305(g) of this title ~~[(relating to Procedures and Requirements for All Review Boards)]~~ in which evidence relating to an individual's possible manifest dangerousness is heard.

(12) ~~[(10)]~~ Independent evaluator--A licensed physician or mental health professional (as defined) retained by an individual or LAR who conducts an evaluation or examination of the individual.

(13) ~~[(11)]~~ Individual--An adult or adolescent committed to a facility (as defined) who is to be the subject of a hearing to determine manifest dangerousness or who has been determined manifestly dangerousness in accordance with this subchapter.

(14) ~~[(12)]~~ LAR or legally authorized representative--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and who may include a parent, guardian, or managing conservator of a minor individual, or a guardian of an adult individual.

(15) ~~[(13)]~~ Local authority--An entity designated by the commissioner in accordance with the Texas Health and Safety Code, §533.035(a).

(16) ~~[(14)]~~ Manifestly dangerous--The term used to describe an individual who, despite receiving appropriate treatment, including treatment targeted to the individual's dangerousness, remains likely to endanger others and requires a maximum security environment in order to continue treatment and protect public safety.

(17) ~~[(15)]~~ Mental health professional--A person, licensed in the State of Texas, who has at least one year of experience as a provider of mental health services within the past five years and who is:

(A) a licensed physician who has successfully completed a psychiatric residency;

(B) a licensed psychologist or licensed psychological associate;

(C) a licensed master social worker (LMSW);

(D) a licensed registered nurse with a bachelor's degree in nursing with American Nurses Credentialing Center (ANCC) certification in psychiatric/mental health nursing; ~~[or]~~

(E) an advanced practice registered nurse licensed to practice in the area of psychiatric/mental health nursing; or

(F) ~~[(E)]~~ a licensed registered nurse with a master's degree in psychiatric/mental health nursing.

(18) ~~[(16)]~~ Maximum security unit--A facility unit designated by the commissioner to treat adults who are determined manifestly dangerous in accordance with this subchapter and persons who have been committed pursuant to the Texas Code of Criminal Procedure, Article 46B or 46C ~~[46.02 or 46.03]~~.

(19) ~~[(17)]~~ MSU/SAU (maximum security unit/secure adolescent unit)--Either the maximum security unit or the secure adolescent unit, as appropriate to the individual.

(20) ~~[(18)]~~ MSU/SAU CEO (chief executive officer)--The superintendent or director, or his/her designee, of the facility at which the MSU/SAU is located.

(21) ~~[(19)]~~ Receiving facility--

(A) For an individual who was transferred to the MSU/SAU--The receiving facility is the facility that transferred the individual to the MSU/SAU unless another facility is identified as the receiving facility.

(B) For an individual who was committed to the MSU/SAU pursuant to the Texas Code of Criminal Procedure--The receiving facility is the facility in the service area of the local authority that serves the individual's county of residence unless another facility or state mental retardation facility is identified as the receiving facility.

(22) ~~[(20)]~~ Risk management plan--A plan for managing the factors contributing to an individual's potential for dangerousness that is implemented following transfer from the MSU/SAU and which includes a description of the level of external controls needed to ensure the safety of others and effective treatment for the individual, the type

of commitment needed to support these controls, and recommendations for continuing care.

(23) [(21)] Secure adolescent unit--A facility unit designated by the commissioner to treat adolescents who are determined manifestly dangerous in accordance with this subchapter.

(24) [(22)] Spokesperson--A person appointed by an individual or LAR to represent the individual or LAR at a hearing. A spokesperson may be an attorney, a relative, a friend, or advocate.

[(23) State mental retardation facility--A state school, or a state center with a mental retardation residential component, that is operated by TDMHMR.]

[(24) TDMHMR--The Texas Department of Mental Health and Mental Retardation.]

[(25) TDMHMR Review Board--Five mental health professionals impaneled in accordance with §415.305(e) of this title (relating to Procedures and Requirements for All Review Boards) to conduct a hearing to determine whether or not an individual served in the MSU/SAU is manifestly dangerous.]

*§415.304. Persons Who May and May Not Be Subject to a Hearing to Determine Manifest Dangerousness.*

(a) (No change.)

(b) The following persons may not be subject to a hearing to determine manifest dangerousness:

(1) an adult, adolescent, or child who is voluntarily admitted to a facility (as defined) or who is under an order of protective custody in accordance with the Texas Health and Safety Code, §574.022 [or §593.044]; and

(2) (No change.)

*§415.305. Procedures and Requirements for All Review Boards.*

(a) Pool of mental health professionals.

(1) (No change.)

(2) DSHS Dangerousness [TDMHMR] Review Board. The commissioner will appoint a pool of at least 16 mental health professionals who will be available to be impaneled as members on the DSHS Dangerousness [TDMHMR] Review Board.

(b) Chair.

(1) (No change.)

(2) DSHS Dangerousness [TDMHMR] Review Board. The commissioner will appoint the chair of the DSHS Dangerousness [TDMHMR] Review Board from the pool of mental health professionals described in subsection (a)(2) of this section. If the chair is unable to serve on the review board during a convening date of the board or for a particular hearing, then the chair will appoint another review board member to act as chair for the convening date or the particular hearing, as appropriate. If the chair is unable to appoint an acting chair, then the commissioner will make the appointment.

(c) (No change.)

(d) Disqualification from being impaneled as a review board member for a hearing.

(1) A mental health professional in a pool may not be impaneled as a facility review board member or as a DSHS Dangerousness [TDMHMR] Review Board member for the hearing of an individual if:

(A) - (B) (No change.)

(2) (No change.)

(3) A mental health professional in a pool may not be impaneled as a DSHS Dangerousness [TDMHMR] Review Board member for the hearing of an individual if the professional served on the facility review board that determined the individual to be manifestly dangerous and which resulted in the individual's transfer to the MSU/SAU.

(e) (No change.)

(f) Legal assistance. An attorney from the DSHS Office of General Counsel [TDMHMR Legal Services Division] will provide legal assistance to a review board as needed.

(g) Conduct of hearings.

(1) (No change.)

(2) The review board must consider all pertinent and relevant information including the hearing documentation submitted in accordance with §415.307(3)(A) of this title (relating to Procedures and Requirements Specific to a Facility Review Board) or §415.310(4)(A) of this title (relating to Procedures and Requirements Specific to the DSHS Dangerousness [TDMHMR] Review Board) and the source documents that correspond to the hearing documentation.

(3) - (6) (No change.)

(7) All persons attending and participating in a [an] hearing must conduct themselves with proper dignity, courtesy, and respect for the hearing. Disorderly conduct will not be tolerated. Attorneys must observe and practice the standards of ethical behavior prescribed for attorneys at law by the State Bar of Texas.

(8) - (9) (No change.)

(h) (No change.)

(i) Review board determination.

(1) - (2) (No change.)

(3) The DSHS Dangerousness [TDMHMR] Review Board may determine that an individual is not manifestly dangerous only if the vote by review board members is unanimous.

(4) (No change.)

(j) (No change.)

*§415.306. Rights of the Individual.*

(a) (No change.)

(b) The individual and LAR and their spokesperson(s) have the right to:

(1) (No change.)

(2) examine before the date of the hearing:

(A) the hearing documentation referenced as §415.307(3)(A) of this title (relating to Procedures and Requirements Specific to a Facility Review Board) unless an exception exists as provided by §415.307(3)(B) of this title; or

(B) the hearing documentation referenced as §415.310(4)(A) of this title (relating to Procedures and Requirements Specific to the DSHS Dangerousness [TDMHMR] Review Board).

(c) - (d) (No change.)

*§415.307. Procedures and Requirements Specific to a Facility Review Board.*

If the facility CEO has reason to believe that a person receiving services in the facility may be manifestly dangerous and in need of transfer to

the MSU/SAU, then the facility CEO may convene the facility review board to conduct a hearing to determine whether the person is manifestly dangerous in accordance with this section.

(1) Convening the board. The facility CEO will inform the chair of the facility review board of the need to convene the board. The chair will impanel a review board in accordance with §415.305(e) of this title (relating to Procedures and Requirements for All Review Boards) and identify the time and location of the hearing. The chair will serve as one of the five members unless the chair is disqualified as described in §415.305(d) of this title. If the chair is disqualified, then the chair will appoint one of the five impaneled members to act as chair for the hearing.

(2) Notice and statement(s). The facility CEO will provide notice of the hearing and receive statement(s) in accordance with this paragraph.

(A) Notice. At least three days before the hearing, the facility CEO will complete the Notice of Hearing by Facility Review Board, referenced [as Exhibit A] in §415.314 of this title (relating to Notice of Hearing Forms [Exhibits]), and deliver it to the individual and LAR, if any, for signature.

(i) - (ii) (No change.)

(B) (No change.)

(3) Hearing documentation.

(A) At least one day before the hearing the facility CEO will ensure the following documentation is distributed to each impaneled review board member, the individual, LAR, and spokesperson(s):

(i) a written summary, prepared by the individual's treatment team, of all pertinent background information, including:

(I) - (IV) (No change.)

(V) an assessment of risk for manifest dangerousness, including the results of any applicable standardized assessment tools; and

(VI) (No change.)

(ii) - (iii) (No change.)

(B) (No change.)

(4) Hearing, deliberations, and determination. The chair will ensure the hearing, deliberations, and determination are conducted in accordance with §415.305(g) - (i) of this title [~~(relating to Procedures and Requirements for All Review Boards)~~].

(5) Action taken upon determination.

(A) Notification. Within 24 hours after the facility review board's determination, the facility CEO will provide written notification to the individual, LAR, and spokesperson(s) of:

(i) (No change.)

(ii) if the review board determines that the individual is manifestly dangerous, the right of the individual or LAR to appeal the determination and the procedures for requesting an appeal as described in §415.309 of this title (relating to Appealing [Appeal of] a Facility Review Board's [Board] Determination of Manifest Dangerousness).

(B) Determined manifestly dangerous.

(i) If the facility review board determines that an individual is manifestly dangerous, then the facility CEO will ensure

compliance with §415.308 of this title (relating to Transfer of [Transferring] an Individual to the MSU/SAU).

(ii) (No change.)

(C) (No change.)

§415.308. Transfer of [Transferring] an Individual to the MSU/SAU.

(a) - (c) (No change.)

§415.309. Appealing [Appeal of] a Facility Review Board's Determination of Manifest Dangerousness.

The individual, LAR, or facility CEO may appeal a facility review board's determination that the individual is manifestly dangerous on the grounds that the determination was substantively flawed or on the grounds that the determination was affected by an error in a procedure specified in this subchapter. Transfer of the individual to the MSU/SAU is not stayed pending appeal.

(1) - (3) (No change.)

§415.310. Procedures and Requirements Specific to the DSHS Dangerousness [TDMHMR] Review Board.

The DSHS Dangerousness [TDMHMR] Review Board must convene at least once every month in accordance with this section.

(1) Schedule of hearings. The DSHS Dangerousness [TDMHMR] Review Board chair, in consultation with the MSU/SAU CEO, is responsible for scheduling hearings in accordance with this paragraph.

(A) Initial hearing.

(i) A hearing for an individual committed to the MSU/SAU under the Texas Code of Criminal Procedure must be scheduled to occur on such a date so as to ensure the individual, if determined not manifestly dangerous, will be transferred from the MSU/SAU within 60 days after arrival at the MSU/SAU, as required by the Texas Code of Criminal Procedure, Article 46B.105 or 46C.260 [46.02§8(a) or 46.03§4(b)].

(ii) (No change.)

(B) - (C) (No change.)

(2) (No change.)

(3) Notice and statement(s). The MSU/SAU CEO will provide notice of a hearing and receive statement(s) in accordance with this paragraph.

(A) Notice. At least 10 days before the hearing, the MSU/SAU CEO will complete the Notice of Hearing by DSHS Dangerousness [TDMHMR] Review Board, referenced [as Exhibit B] in §415.314 of this title (relating to Notice of Hearing Forms [Exhibits]), and deliver it to the individual and LAR, if any, for signature.

(i) - (ii) (No change.)

(B) (No change.)

(4) Hearing documentation.

(A) At least seven days before the hearing the MSU/SAU CEO will ensure the following documentation is distributed to each review board member impaneled for the hearing, the individual, LAR, and spokesperson(s):

(i) a written summary, prepared by the individual's MSU/SAU treatment team, of all pertinent background information, including:

(I) - (IV) (No change.)

(V) an assessment of risk for manifest dangerousness, including the results of any applicable standardized assessment tools; and

(VI) (No change.)

(ii) - (iv) (No change.)

(B) - (C) (No change.)

(5) Preparing for possible transfer from the MSU/SAU. At least seven days prior to the hearing, the MSU/SAU CEO must ensure:

(A) that ~~[a Letter of Attestation (referenced as Exhibit C in §415.314 of this title (relating to Exhibits))]~~, with a copy of the hearing documentation (referenced in paragraph (4)(A) of this section), is sent to the receiving facility CEO; and

(B) that the individual's MSU/SAU treating physician consults with a physician at the identified receiving facility ~~[physician]~~ regarding the individual's characteristics, including those with implications for risk management, to facilitate the development of an appropriate risk management plan by the receiving facility.

(6) (No change.)

(7) Action taken upon determination.

(A) Notification. Within 24 hours after the DSHS Dangerousness [TDMHMR] Review Board's determination, the MSU/SAU CEO will provide written notification to the individual, LAR, and spokesperson(s) of:

(i) (No change.)

(ii) the right of the individual or LAR to request that the MSU/SAU CEO refer the matter to the commissioner and the procedures for requesting a referral as described in §415.311 of this title (relating to Disagreement with DSHS Dangerousness [TDMHMR] Review Board Determination and Referral to Commissioner) if the individual or LAR disagrees with the determination.

(B) Determined manifestly dangerous. If the DSHS Dangerousness [TDMHMR] Review Board determines that an individual is manifestly dangerous, then the individual will remain at the MSU/SAU ~~[and the MSU/SAU CEO will rescind the Letter of Attestation that was sent in accordance with paragraph (5)(A) of this section]~~. A subsequent hearing will be scheduled for the individual in accordance with paragraph (1) of this section.

(C) Determined not manifestly dangerous. If the DSHS Dangerousness [TDMHMR] Review Board determines that an individual is not manifestly dangerous, then the MSU/SAU CEO will:

(i) - (ii) (No change.)

(D) New hearing. The DSHS Dangerousness [TDMHMR] Review Board may conduct a new hearing at any time upon request by the MSU/SAU CEO or upon its own motion. The new hearing must be conducted in accordance with paragraphs (2) - (6) of this section.

*§415.311. Disagreement with DSHS Dangerousness [TDMHMR] Review Board Determination and Referral to Commissioner.*

(a) If the MSU/SAU CEO disagrees with the DSHS Dangerousness [TDMHMR] Review Board's determination, then the CEO will refer the matter to the commissioner for resolution. The referral must be in writing and include the CEO's reason(s) for disagreeing with the determination and documentation supporting the reason(s). Transfer of the individual from the MSU/SAU is stayed pending resolution.

(b) (No change.)

(c) If the individual, LAR, or treatment team member disagrees with the DSHS Dangerousness [TDMHMR] Review Board's determination, then he/she may request that the MSU/SAU CEO refer the matter to the commissioner for resolution. The request must be in writing and received by the CEO within five days after receipt of the written report as described in §415.305(j) of this title (relating to Procedures and Requirements for All Review Boards). The request must include the reason(s) for disagreeing with the determination and documentation supporting the reason(s). Upon receipt, the CEO will review the request and decide whether to refer the matter to the commissioner in accordance with subsection (a) of this section.

*§415.312. Transferring an Individual from the MSU/SAU.*

(a) An individual committed to the MSU/SAU pursuant to the Texas Code of Criminal Procedure, Article 46B or 46C ~~[46-02 or 46-03]~~, who has been determined not manifestly dangerous by the DSHS Dangerousness [TDMHMR] Review Board or the commissioner at the initial hearing (described in §415.310(1)(A)(i) of this title (relating to Procedures and Requirements Specific to the DSHS Dangerousness [TDMHMR] Review Board)) must be transferred from the MSU/SAU within 60 days following his/her arrival at the MSU/SAU.

(b) In addition to the timeframe for transfer described in subsection (a) of this section, an individual must be transferred from the MSU/SAU within 14 days after being determined not manifestly dangerous by the DSHS Dangerousness [TDMHMR] Review Board or the commissioner.

(c) As soon as possible after an individual has been determined not manifestly dangerous by the DSHS Dangerousness [TDMHMR] Review Board or the commissioner, ~~[:]~~

~~[(+)]~~ the MSU/SAU staff will notify the committing court of the pending transfer. ~~[:] and]~~

~~[(2)]~~ the receiving facility CEO will complete the Letter of Attestation (referenced as Exhibit C in §415.314 of this title (relating to Exhibits)), if it has not already been completed. ~~:]~~

(d) Prior to the individual's transfer from the MSU/SAU, the MSU/SAU CEO will ensure ~~that~~ the following documents become a part of the individual's medical record:

~~[(+)]~~ the hearing documentation described in §415.310(4)(A) of this title (relating to Procedures and Requirements Specific to the DSHS Dangerousness [TDMHMR] Review Board) becomes a part of the individual's medical record. ~~[:] and]~~

~~[(2)]~~ a copy of the completed Letter of Attestation. ~~:]~~

(e) - (h) (No change.)

*§415.313. Competency of Review Board Members.*

(a) Using a DSHS-approved ~~[TDMHMR-approved]~~ orientation and training program:

(1) (No change.)

(2) the MSU/SAU CEO and the chair of the DSHS Dangerousness [TDMHMR] Review Board are responsible for conducting annual training for all mental health professionals appointed in all pools.

(b) - (c) (No change.)

(d) The commissioner may waive for emergent or special circumstances, as minimally necessary to assure the efficient operation of a review board, the responsibility for a mental health professional appointed to a pool to ~~[attend initial orientation and]~~ annual training. There is no waiver of the requirement to attend initial orientation.

*§415.314. Notice of Hearing Forms [Exhibits].*

The following forms [exhibits] are referenced in this subchapter, copies of which may be obtained by contacting TDMHMR, Office of Policy Development, P.O. Box 12668, Austin, Texas 78711-2668:]

(1) [Exhibit A--] Notice of Hearing by Facility Review Board; and  
Figure: 25 TAC §415.314(1)

(2) [Exhibit B--] Notice of Hearing by DSHS Dangerousness [TDMHMR] Review Board,[; and]  
Figure: 25 TAC §415.314(2)

[(3) Exhibit C--Letter of Attestation.]

*§415.315. References.*

Reference is made to the following statutes:

(1) Texas Health and Safety Code, §533.035(a) and[; §574.022[; and §593.044]; and

(2) Texas Code of Criminal Procedure, Articles 46B and 46C [46.02 and 46.03].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2011.

TRD-201101118

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 458-7111 x6972



**25 TAC §415.316**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

**STATUTORY AUTHORITY**

The repeal is authorized by Health and Safety Code, §571.006, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules as necessary for the proper and efficient treatment of persons with mental illness; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rule implements Government Code, §2001.039.

The repeal affects the Health and Safety Code, Chapters 531, 533, 571, 574, and 1001; and Code of Criminal Procedure, Articles 46B and 46C.

*§415.316. Distribution.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2011.

TRD-201101119

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 458-7111 x6972



**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**PART 3. TEXAS YOUTH COMMISSION**

**CHAPTER 97. SECURITY AND CONTROL**

**SUBCHAPTER B. PEACE OFFICERS**

**37 TAC §§97.71, 97.73, 97.75, 97.77**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Youth Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Youth Commission (TYC) proposes the repeal of §97.71, concerning peace officer commissioning; §97.73, concerning peace officer jurisdiction; §97.75, concerning peace officer continuum of force; and §97.77, concerning peace officer firearms management.

During the course of TYC's most recent rule review, as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9747), TYC determined that the reasons for adopting Chapter 97, Subchapter B, no longer exist. The duties and responsibilities described by Subchapter B are governed by, and more appropriately addressed in, specific statutes and rules which apply to all peace officers in the State of Texas and by recently enacted portions of the Human Resources Code applicable to the TYC Office of Inspector General.

Section 97.71, concerning peace officer commissioning, is governed by Human Resources Code §61.0931 and §61.0451 relating to peace officer commissioning by the TYC Office of Inspector General; 37 TAC §217.7, relating to reporting the appointment and termination of a licensee; and 37 TAC §211.29, relating to responsibilities of agency chief administrators.

Section 97.73, concerning peace officer jurisdiction, is governed by the Code of Criminal Procedure, Articles 2.13, concerning duties and powers; 14.03, concerning authority of peace officers; and 18.06, concerning execution of warrants.

Section 97.75, concerning peace officer continuum of force, is governed by Penal Code §9.51, relating to arrest and search and use of force.

Section 97.77, concerning peace officer firearms management, is governed by Penal Code §46.02, relating to unlawful carrying of weapons; §46.03, relating to places weapons are prohibited; and §46.15, relating to the nonapplicability of §46.02 and §46.03 to peace officers.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the repeals are in effect there are no anticipated significant fiscal implications for state or local government as a result of enforcing or administering the repeal.

Cris Love, Chief Inspector General, has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be consistency and compliance with statewide regulations concerning peace officers.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed. No private real property rights are affected by adoption of these repeals.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Erica Knutsen, Policy Department, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or email to [policy.proposals@tyc.state.tx.us](mailto:policy.proposals@tyc.state.tx.us).

The repeals are proposed under Human Resources Code §61.034, which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

The proposed repeals implement Human Resources Code §61.034.

§97.71. *Peace Officer: Commissioning.*

§97.73. *Peace Officer: Jurisdiction.*

§97.75. *Peace Officer: Continuum of Force.*

§97.77. *Peace Officer: Firearms Management.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 16, 2011.

TRD-201101102

Cheryl N. Townsend

Executive Director

Texas Youth Commission

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 424-6475



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

#### **CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION**

##### **SUBCHAPTER I. RESIDENT ASSESSMENT**

###### **40 TAC §19.805**

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §19.805, concerning permanency planning for a resident under 22 years of age, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

###### **BACKGROUND AND PURPOSE**

The purpose of the amendment is to revise the permanency planning rule to reflect current practices regarding reporting information about nursing facility residents under 22 years of age.

Section 19.805 requires nursing facilities to report certain information to the "DADS pediatric nurse specialist." DADS no longer employs a pediatric nurse specialist so the proposed amendment deletes references to that position when notifying DADS of a child's admission and by deleting the requirement to notify DADS when a child has a significant change in condition. The amendment also updates maintenance requirements for Preadmission Screening and Resident Review (PASARR) documentation.

###### **SECTION-BY-SECTION SUMMARY**

The proposed amendment to §19.805(b)(2) deletes reference to the pediatric nurse specialist and adds specific direction to report the admission of a resident under the age of 22 using DADS Form 2437. The amendment removes a detailed list of information to report, as that information is gathered on DADS Form 2437. The amendment also corrects the Early Childhood Intervention telephone number and makes technical changes to the organization and wording of the rule to be consistent with current practices.

The proposed amendment to §19.805 deletes subsection (b)(3), as this information is not required to be reported to DADS by statute and is gathered through PASARR reporting. The amendment renumbers subsequent paragraphs and corrects internal cross-references throughout the rule in response to this change.

The proposed amendment revises §19.805(b)(3) by adding "a copy of all PASARR documents" to the list of documents that a facility must keep in a separate section of a child's record.

The proposed amendment revises §19.805(b)(4)(J), adding the telephone number for a facility to report that it has been unable to locate a child's legally authorized representative.

The proposed amendment to §19.805(b)(6), deletes reference to the pediatric nurse specialist.

###### **FISCAL NOTE**

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

###### **SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS**

DADS has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses.

###### **PUBLIC BENEFIT AND COSTS**

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendment is in effect, the public will benefit from updated and clarified rules that are more accurate and easier for the public and providers to use and understand.

Ms. Durden anticipates that there will be no economic cost to persons who are required to comply with the amendment.

###### **TAKINGS IMPACT ASSESSMENT**

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

## PUBLIC COMMENT

Questions about the content of this proposal may be directed to Justin Eaton at (512) 438-2133 in DADS Regulatory Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-9R030, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the Texas Register. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R030" in the subject line.

## STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

The amendment implements Texas Government Code, §531.0055 and §531.154, and Texas Human Resources Code, §161.021.

§19.805. *Permanency Planning for a Resident Under 22 Years of Age.*

(a) Definitions. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Permanency planning--A philosophy and planning process that focuses on the outcome of family support by facilitating a permanent living arrangement, with the primary feature of an enduring and nurturing parental relationship. Family-directed planning empowers the family of a child under the age of 18 to direct the development of supports and services that meet the child and family's personal outcomes as related to that child. Person-directed planning empowers the child who is between 18 and 22 years of age to direct the development of a plan of supports and services that meets the needs for self-determination.

(2) Child--A person with a developmental disability who is under 22 years of age.

(3) CRCG (Community resource coordination group)--A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the Health and Human Services Commission website at [www.hhsc.state.tx.us/crcg/crcg.htm](http://www.hhsc.state.tx.us/crcg/crcg.htm).

(4) Emergency situation--An unexpected situation involving a child's health, safety, or welfare, of which a person of ordinary prudence would determine that the LAR should be informed, such as:

- (A) a child needing emergency medical care;
- (B) a child being removed from his residence by law enforcement;
- (C) a child leaving his residence without notifying staff and not being located; and
- (D) a child being moved from his residence to protect the child (for example, because of a hurricane, fire, or flood).

(5) LAR (legally authorized representative)--A person authorized by law to act on behalf of a resident with regard to a matter described in this subchapter, which may include a parent, guardian, managing conservator of a minor individual, a guardian of an adult individual, or legal representative of a deceased individual.

(6) Permanency planner--A person assigned by DADS to conduct permanency planning activities for a child who resides in a facility.

(b) Facility responsibilities regarding permanency planning.

(1) A facility must request a Preadmission Screening and Resident Review (PASARR) on every child who is a potential admission to a facility, as well as on all children currently residing in a facility who have not had a previous PASARR completed. Documentation regarding the request for or completion of a PASARR must be kept in the chart.

(2) A facility must notify the following entities of the child's admission not later than the third day after a child is initially placed in a facility:

(A) ~~[the] DADS [pediatric nurse specialist] via fax, using DADS Form 2437, Notification of Nursing Facility Admission of Individual Under Age 22 [Information must include the child's full name, date of birth, date of admission, social security number, Medicaid number (if available), the facility name and address, and the name, address, and telephone number of the child's LAR];~~

(B) the CRCG in the county where the LAR resides (see [www.hhsc.state.tx.us/crcg/crcg.htm](http://www.hhsc.state.tx.us/crcg/crcg.htm) for a listing of CRCG chairpersons by county); ~~[and]~~

(C) the local office of the Early Childhood Intervention (ECI) Program of the Texas Department of Assistive and Rehabilitative Services, if a child is less than three years of age (see [www.dars.state.tx.us/ecis/index.shtml](http://www.dars.state.tx.us/ecis/index.shtml) or call 1-800-628-5115 [1-800-250-2246] for a listing of ECI programs by county); ~~and [or]~~

(D) the local school district, if a child is 3 to 22 ~~[at least three]~~ years of age, with which the facility must coordinate educational opportunities (See §19.1934 of this title (relating to Educational Requirements for Persons under Age 22)).

~~[(3) A facility must notify the DADS pediatric nurse specialist within 14 days if there is a significant change of condition in a child residing in the facility.]~~

(3) ~~[(4)]~~ A facility must keep ~~[documentation regarding the notifications required in paragraphs (2) and (3) of this subsection and a copy of the current permanency plan]~~ in a separate section at [in] the front of each child's records; ~~[-]~~

(A) documentation regarding the notifications required in paragraph (2) of this subsection;

(B) a copy of all PASARR documents; and

(C) a copy of the current permanency plan.

(4) ~~[(5)]~~ A facility must:

(A) cooperate with the permanency planner by:

(i) allowing access to a child's records or providing other information in a timely manner as requested by the permanency planner or the Health and Human Services Commission;

(ii) participating in meetings to review the child's permanency plan; and

(iii) identifying, in coordination with the permanency planner, activities, supports, and services that can be provided by the family, LAR, facility, or the permanency planner to prepare the child for an alternative living arrangement;

(B) encourage regular contact between the child and LAR and, if desired by the child and LAR, between the child and advocates and friends in the community to continue supportive and nurturing relationships;

(C) encourage participation in the comprehensive care plan meetings by the LAR, and, if desired by the child or LAR, by family members, advocates, and friends in the community;

(D) make reasonable accommodations to promote the participation of the LAR in all planning and decision-making regarding the child's care, including participating in:

(i) the initial development and annual review of the child's comprehensive care plan;

(ii) decision-making regarding the child's medical care;

(iii) routine interdisciplinary team meetings; and

(iv) decision-making and other activities involving the child's health and safety;

(E) ensure that reasonable accommodations include:

(i) conducting a meeting in person or by telephone, as mutually agreed upon by the facility and the LAR;

(ii) conducting a meeting at a time and, if the meeting is in person, at a location that is mutually agreed upon by the facility and the LAR;

(iii) if the LAR has a disability, providing reasonable accommodations in accordance with the Americans with Disabilities Act, including providing an accessible meeting location or a sign language interpreter, if appropriate; and

(iv) providing a language interpreter, if appropriate;

(F) upon admission and annually thereafter:

(i) request from and encourage an LAR to provide the following information for a child during the annual comprehensive care plan meeting and, for an applicant, upon admission:

(I) the LAR's:

(-a-) name;

(-b-) address;

(-c-) telephone number;

(-d-) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(-e-) place of employment and the employer's address and telephone number;

(II) the name, address, and telephone number of a relative of the child or other person whom DADS or the facility may contact in an emergency situation, a statement indicating the relation between that person and the child, and at the LAR's option:

(-a-) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(-b-) the name, address, and telephone number of that person's employer; and

(III) a signed acknowledgement of responsibility stating that the LAR agrees to:

(-a-) notify the facility of any changes to the contact information submitted; and

(-b-) make reasonable efforts to participate in the child's life and in planning activities for the child; and

(ii) inform the LAR that if the information described in clause (i) of this subparagraph is not provided or is not accurate and the facility and DADS are unable to locate the LAR as described in subparagraph (J) of this paragraph, DADS refers the case to the Department of Family and Protective Services, in accordance with subsection (c) of this section;

(G) refrain from providing the LAR with inaccurate or misleading information regarding the risks of moving the child to another facility or community setting;

(H) if an emergency situation occurs, attempt to notify the LAR as soon as the emergency situation allows and request a response from the LAR;

(I) if an LAR does not respond to a notice of the child's annual comprehensive care plan meeting, a request for the LAR's consent, or an emergency situation, attempt to locate the LAR by contacting a person identified by the LAR in the contact information described in subparagraph (F) of ~~[(F)]~~ this paragraph;

(J) no later than 30 days after the date the facility determines that it is unable to locate the LAR, notify DADS at 1-800-458-9858 of that determination and request that DADS initiate a search for the LAR;

(K) before a child who is under 18 years of age, or who is 18-22 years of age and for whom an LAR has been appointed, is transferred to another facility operated by the transferring facility, attempt to obtain consent for the transfer from the LAR, unless the transfer is made because of a serious risk to the health and safety of the child or another person; and

(L) document compliance with the requirements of this paragraph in the child's records.

(5) ~~[(6)]~~ The facility administrator must ensure that the social worker or other appropriate staff, as needed, will contribute to the development of the permanency plan.

(6) ~~[(7)]~~ Paragraphs ~~(3) - (5)~~ ~~[(3) - (6)]~~ of this subsection do not apply to short- stay care of less than 14 days; however, the facility must notify ~~[(the)]~~ DADS ~~[(pediatric nurse specialist)]~~, the CRCG, ~~[(and)]~~ ECI, ~~[(and)]~~ ~~[(of)]~~ the local school district as required in paragraph ~~(2)(A) - (D)~~ ~~[(2)(A) - (C)]~~ of this subsection.

(c) If, within one year of the date DADS receives the notification described in subsection ~~(b)(4)(J)~~ ~~[(b)(5)(J)]~~ of this section, DADS is unable to locate the LAR, DADS refers the case to:

(1) the Child Protective Services Division of the Department of Family and Protective Services if the child is under 18 years of age; or



(2) the Adult Protective Services Division of the Department of Family and Protective Services if the child is 18-22 years of age.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2011.

TRD-201101122

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 438-3734



## CHAPTER 80. STATE AGING PLAN

### 40 TAC §80.3

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §80.3, concerning area agency on aging funding allocation formula for Older Americans Act programs, in Chapter 80, State Aging Plan.

#### BACKGROUND AND PURPOSE

Section 80.3 is proposed for repeal because a new section that contains the funding allocation formula for area agencies on aging (AAAs) is proposed elsewhere in this issue of the *Texas Register*. Therefore, §80.3 is no longer needed.

#### SECTION-BY-SECTION SUMMARY

The proposed repeal of §80.3 removes the formula for how DADS allocates funding to AAAs for Older Americans Act programs.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years after the repeal, there are no foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses, because the rule applies only to AAAs. AAAs are public or non-profit agencies or organizations, not small businesses or micro-businesses, which are legal entities formed for the purpose of making a profit.

#### PUBLIC BENEFIT AND COSTS

Gary Jessee, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the section is to remove a rule that would be duplicative of rules in Chapter 85, resulting in clearer, more up-to-date rules.

Mr. Jessee anticipates that there will not be an economic cost to persons who are affected by the repeal. The repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Toni Packard at (512) 438-4290 in DADS Access and Intake Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-9R022, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, TX 78714-9030 or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R022" in the subject line.

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

*§80.3. Area Agency on Aging Funding Allocation Formula for Older Americans Act Programs.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2011.

TRD-201101123

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 438-3734



## CHAPTER 81. OPERATION OF THE AREA AGENCIES ON AGING

### 40 TAC §81.17, §81.21

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §81.17, concerning appeal procedures for subcontractors, vendors, and service provider applicants, and §81.21, concerning Americans with Disabilities Act (ADA) grievance procedures for participants in Older Americans Act programs, in Chapter 81, Operation of the Area Agencies on Aging.

#### BACKGROUND AND PURPOSE

The purpose of the proposed repeal is to remove the rule regarding the process by which a person contracting with an area agency on aging (AAA), a subcontractor, appeals an adverse action taken by the AAA against the subcontractor. This rule is not necessary because a AAA is required, through its contract with DADS, to develop and implement appeal procedures for actions taken against a subcontractor and to include the process in the contractual agreement with the subcontractor.

The proposed repeal also removes the rule regarding the process by which a program participant files a complaint regarding a AAA's compliance with the Americans with Disabilities Act and how the AAA handles the complaint. This rule is not necessary because 40 TAC §81.19 and §85.201(j) require a AAA to have a process by which a program participant files a grievance regarding services received from the AAA, including a complaint regarding compliance with the Americans with Disabilities Act.

#### SECTION-BY-SECTION SUMMARY

The proposed repeal of §81.17 removes rules regarding procedures by which a subcontractor appeals an action taken by a AAA against the subcontractor.

The proposed repeal of §81.21 removes rules regarding procedures by which a program participant files a complaint regarding a AAA's compliance with the Americans with Disabilities Act and how the AAA handles the complaint.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years after the repeal, there are no foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses, because the rules apply only to AAAs. AAAs are public or non-profit agencies or organizations, not small businesses or micro-businesses, which are legal entities formed for the purpose of making a profit.

#### PUBLIC BENEFIT AND COSTS

Gary Jessee, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the sections is that unnecessary rules related to the appeal and complaint processes will be deleted.

Mr. Jessee anticipates that there will not be an economic cost to persons who are affected by the repeal. The repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Toni Packard at (512) 438-4290 in DADS Access and Intake Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-9R022, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, TX 78714-9030 or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R022" in the subject line.

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

*§81.17. Appeal Procedures for Subcontractors, Vendors, and Service Provider Applicants.*

*§81.21. Americans with Disabilities Act (ADA) Grievance Procedures for Participants in Older Americans Act Programs.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2011.

TRD-201101124

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 438-3734



## CHAPTER 82. STATE DELIVERY SYSTEMS

### 40 TAC §82.39

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §82.39, concerning funding allocation formula for Retired Senior Volunteer Program projects, in Chapter 82, State Delivery Systems.

#### BACKGROUND AND PURPOSE

Section 82.39 is proposed for repeal because a new section that contains the guidelines to determine the proportion of state money distributed to entities that operate a program under the National Senior Services Corps is proposed elsewhere in this issue of the *Texas Register*. Therefore, §82.39 is no longer needed.

#### SECTION-BY-SECTION SUMMARY

The proposed repeal of §82.39 removes the formula for how DADS allocates funding for Retired Senior Volunteer Program projects.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years after the repeal, there are no foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses, because the rules apply only to area agencies on aging (AAAs). AAAs are public or nonprofit agencies or organizations, not small businesses or micro-businesses, which are legal entities formed for the purpose of making a profit.

#### PUBLIC BENEFIT AND COSTS

Gary Jessee, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the section is to remove rules that would be duplicative of rules in Chapter 85, resulting in clearer, more up-to-date rules.

Mr. Jessee anticipates that there will not be an economic cost to persons who are affected by the repeal. The repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Toni Packard at (512) 438-4290 in DADS Access and Intake Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-9R022, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, TX 78714-9030 or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [\[ments@dads.state.tx.us\]\(mailto:ments@dads.state.tx.us\). To be considered, comments must be submitted no later than 30 days after the date of this issue of the \*Texas Register\*. The last day to submit comments falls on a Sunday; therefore, comments must be: \(1\) postmarked or shipped before the last day of the comment period; \(2\) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or \(3\) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R022" in the subject line.](mailto:rulescom-</a></p></div><div data-bbox=)

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

*§82.39. Funding Allocation Formula for Retired Senior Volunteer Program Projects.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2011.

TRD-201101125

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 438-3734



## CHAPTER 83. AREA AGENCY ON AGING ADMINISTRATIVE REQUIREMENTS

### 40 TAC §83.15, §83.17

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §83.15, concerning criteria for administering carryover of unexpended funds, and §83.17, concerning approval of direct services applications from Area Agencies on Aging, in Chapter 83, Area Agency on Aging Administrative Requirements.

#### BACKGROUND AND PURPOSE

Sections 83.15 and 83.17 are proposed for repeal because a new section that describes how award funds not spent by an area agency on aging (AAA) are handled and a new section that describes the process for a AAA to request approval to directly

provide a service are proposed elsewhere in this issue of the *Texas Register*. Therefore, §83.15 and §83.17 are no longer needed.

#### SECTION-BY-SECTION SUMMARY

The proposed repeal of §83.15 removes the rule that describes the criteria for administering carryover of unexpended funds by a AAA and the criteria by which a AAA may receive unexpended funds.

The proposed repeal of §83.17 removes the rule that describes the process by which a AAA requests to provide a service directly instead of through a subcontractor.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years after the repeal, there are no foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses, because the rules apply only to AAAs. AAAs are public or non-profit agencies or organizations, not small businesses or micro-businesses, which are legal entities formed for the purpose of making a profit.

#### PUBLIC BENEFIT AND COSTS

Gary Jessee, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the sections is to remove rules that would be duplicative of rules in Chapter 85, resulting in clearer, more up-to-date rules.

Mr. Jessee anticipates that there will not be an economic cost to persons who are affected by the repeal. The repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Toni Packard at (512) 438-4290 in DADS Access and Intake Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-9R022, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, TX 78714-9030 or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R022" in the subject line.

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

*§83.15. Criteria for Administering Carryover of Unexpended Funds.*

*§83.17. Approval of Direct Services Applications from Area Agencies on Aging.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2011.

TRD-201101126

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 438-3734

## CHAPTER 85. IMPLEMENTATION OF THE OLDER AMERICANS ACT

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §85.2, concerning definitions; new §85.206, concerning process for AAA to request approval to directly provide a service; and new Subchapter F, Management and Oversight, consisting of new §85.501, concerning AAA funding allocation formula for Older Americans Act programs, and new §85.502, concerning unspent award funds, in Chapter 85, Implementation of the Older Americans Act.

#### BACKGROUND AND PURPOSE

The proposed rules in Chapter 85 describe administrative responsibilities of the area agencies on aging (AAAs) regarding the provision of services as well as the management and oversight functions of DADS regarding the AAAs.

The purpose of the new sections and amendment is to rewrite and update rules to be consistent with current agency practice, update terminology, and reorganize rules for clarity.

The purpose of the new sections is also to remove a \$125,000 limit placed on the amount of unspent award funds received in the first six months of a federal fiscal year that a AAA may spend in the next federal fiscal year. With removal of this limit, all AAAs may spend up to five percent of their unspent award funds in the next fiscal year. Amounts over five percent are placed in the statewide carryover pool. Removal of the \$125,000 limit results in a more equitable process for AAAs to determine the amount of unspent award funds they are allowed to spend in the next fiscal year.

#### SECTION-BY-SECTION SUMMARY

The amendment to proposed §85.2 adds definitions for "federal fiscal year," "older individual," and "statewide carryover pool."

Proposed new §85.206 describes the process for a AAA to request approval to directly provide a service included in the AAA's area plan, including the conditions that must be met for DADS to approve the request and how a request is made in the event of an unforeseen and uncontrollable situation that prevents delivery of a service by a person, contractor, or vendor.

Proposed new §85.501 describes the formula DADS uses to distribute funds to AAAs in accordance with the Older Americans Act, §305(a)(2)(C). The content of this section is in current §80.3 of Chapter 80 of this title but, as part of the reorganization of rules governing AAAs, is being proposed as new §85.501 with minor changes to update terminology and removal of language regarding the allocation of funds in 2003, 2004, and 2005, which is no longer applicable.

Proposed new §85.502 describes the process for handling award funds that are not spent by a AAA at the end of a federal fiscal year, including how funds in the statewide carryover pool are distributed.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed new sections and amendment are in effect, enforcing or administering the new sections and amendment does not have foreseeable implications relating to costs or revenues of state governments or to costs of local governments. Proposed new §85.502 may result in an increase or decrease to revenues of local governments. It may result in an increase because it allows a AAA to spend up to five percent of unspent award funds received in the first six months of a federal fiscal year in the next federal fiscal year, instead of imposing a \$125,000 limit on that amount. It may result in a decrease, however, because the more unspent award funds a AAA spends in the next federal fiscal year, the less funds placed in the statewide carryover pool for distribution to other AAAs. The amount of that revenue increase or decrease cannot be determined at this time.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new sections and amendment will not have an adverse economic effect on small businesses or micro-businesses, because the rules apply only to AAAs. AAAs are public or nonprofit agencies or organizations, not small businesses or micro-businesses, which are legal entities formed for the purpose of making a profit.

#### PUBLIC BENEFIT AND COSTS

Gary Jessee, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the new sections and amendment are in effect, the public benefit expected as a result of enforcing the new sections and amendment is that agency rules related to the administrative responsibility of the AAAs and the management and oversight functions of DADS regarding the AAAs will be clear and consistent with agency practice.

Mr. Jessee anticipates that there will not be an economic cost to persons who are required to comply with the new sections and amendment. The new sections and amendment will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Toni Packard at (512) 438-4290 in DADS Access and Intake Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-9R022, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, TX 78714-9030 or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R022" in the subject line.

### SUBCHAPTER A. DEFINITIONS

#### 40 TAC §85.2

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

#### §85.2. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) - (17) (No change.)

(18) Federal fiscal year--A 12-month period of time beginning the 1st of October through the 30th of September.

(19) [~~(18)~~] Fixed unit rate--A negotiated cost for a service, cost per program participant, or cost per event set forth in a contract or vendor agreement, that remains the same until the contract or vendor agreement is renegotiated, regardless of the amount of services provided, the number of program participants served, or the number of events that occur.

(20) [~~(19)~~] Friendly visitor--A volunteer for a AAA or nonprofit organization designated in accordance with §85.401(b) of this chapter who:

(A) is not a certified ombudsman or ombudsman intern;

(B) meets the qualifications described in §85.401(g)(2) of this chapter; and

(C) performs activities to further the mission of the Long-Term Care Ombudsman Program such as visiting residents and coordinating social activities.

(21) [(20)] Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include:

(A) a parent, guardian, or managing conservator of a minor;

(B) the guardian of an adult;

(C) an agent to whom authority to make health care decisions is delegated under a medical power of attorney or durable power of attorney in accordance with state law; or

(D) the representative of a deceased person.

(22) [(21)] Local ombudsman entity--A AAA or other entity designated by DADS to provide services in the Long-Term Care Ombudsman Program in accordance with the Older Americans Act, §712(a)(5)(A).

(23) [(22)] LTC facility--Long-term care facility. A nursing facility licensed or required to be licensed in accordance with Texas Health and Safety Code, Chapter 242, and Chapter 19 of this title (relating to Nursing Facility Requirements for Licensure and Medicaid Certification) or an assisted living facility licensed or required to be licensed in accordance with Texas Health and Safety Code, Chapter 247, and Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities).

(24) [(23)] Means testing--Using a person's income and resource data.

(25) [(24)] Office--The Office of the State Long-Term Care Ombudsman. A division of DADS established to oversee the statewide implementation of the Long-Term Care Ombudsman Program.

(26) [(25)] Older Americans Act--A federal law enacted to establish and fund a comprehensive service system for persons 60 years of age or older.

(27) Older individual--A person who is 60 years of age or older.

(28) [(26)] Ombudsman intern--A person who is being trained to be a certified volunteer ombudsman in accordance with DADS Ombudsman Certification Training Manual but has not been approved by the Office to be a certified volunteer ombudsman.

(29) [(27)] Planning and service area--A geographical area, consisting of one or more counties, for which DADS designates one AAA to develop and implement an area plan.

(30) [(28)] Program participant--A person receiving a service described in this chapter.

(31) [(29)] Resident--A person who resides in an LTC facility.

(32) [(30)] Responder--A person identified by the program participant or designated by the AAA who will respond to an alarm call by a program participant.

(33) [(31)] Service provider--A subcontractor or a vendor.

(34) [(32)] Severe disability--A severe, chronic disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that:

(A) is likely to continue indefinitely; and

(B) results in substantial functional limitation in three or more of the major life activities specified in paragraph (15)(A) - (I) of this section.

(35) [(33)] Staff person--Personnel, including a full-time and part-time employee, contractor, and intern other than an ombudsman intern, but excluding a volunteer.

(36) Statewide carryover pool--An account established and managed by DADS that contains award funds not spent by a AAA at the end of a federal fiscal year as described in §85.502(c)(1)(B) of this chapter (relating to Unspent Award Funds).

(37) [(34)] State Long-Term Care Ombudsman--The person designated by DADS to be the administrator of the Office.

(38) [(35)] Subcontractor--The party with whom a AAA enters into a contract.

(39) [(36)] System check--Activating the call button of an electronic monitoring system to test the system.

(40) [(37)] Variable unit rate--A negotiated cost for a service, cost per program participant, or cost per event set forth in a contract or vendor agreement that may change depending on the criteria and conditions set forth in the contract or vendor agreement.

(41) [(38)] Vendor agreement--A binding agreement between a AAA and a vendor obligating the vendor to provide goods or services to individuals determined eligible by the AAA for such goods or services as part of the AAA's implementation and administration of a service described in this chapter.

(42) [(39)] Vendor--The party with whom a AAA enters into a vendor agreement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2011.

TRD-201101128

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 438-3734



## SUBCHAPTER C. AAA ADMINISTRATIVE REQUIREMENTS

### 40 TAC §85.206

#### STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new section implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§85.206. Process for AAA to Request Approval to Directly Provide a Service.

(a) Purpose. This section establishes the process for a AAA to request approval to directly provide a service included in the AAA's area plan. In this section, to directly provide a service means to provide the service by a staff person or volunteer.

(b) Services requiring approval to directly provide. For each service listed in the *Service Definitions for Area Agencies on Aging*, found at DADS website, DADS states whether a AAA must obtain approval from DADS to directly provide the service. If a AAA is required to obtain such approval, the AAA must request approval in accordance with this section.

(c) Conditions for approval. In accordance with the Older Americans Act, §307(a)(8), DADS approves a AAA's request to directly provide a service only if:

(1) the direct provision of the service by the AAA is necessary to ensure an adequate supply of the service;

(2) the service is directly related to the AAA's administrative functions; or

(3) the service can be provided more economically, and with comparable quality, by the AAA.

(d) Non-emergency request.

(1) Unless the request for approval is made because of an emergency as described in subsection (e) of this section, a AAA must request approval to directly provide a service by:

(A) submitting a written request to DADS that:

(i) identifies the service the AAA is requesting to directly provide;

(ii) identifies the conditions in subsection (c) of this section that are the basis for the AAA's request;

(iii) includes an explanation supporting the condition identified by the AAA;

(iv) if the condition identified by the AAA is the one in subsection (c)(3) of this section, includes information comparing:

(I) the cost of directly providing the service with the cost of not directly providing the service; and

(II) the quality of the service if directly provided with the quality of the service if not directly provided; and

(v) states the period of time for which the AAA requests to directly provide the service; and

(B) providing any additional information to DADS upon request.

(2) If DADS grants approval of a AAA's request to directly provide a service, the approval is effective for the period of time stated in paragraph (1)(A)(v) of this subsection, not to extend past the effective period of the AAA's current area plan.

(3) If DADS grants approval for a AAA's non-emergency request to directly provide a service, the AAA must amend its area plan to include a provision that the service is being directly provided by the AAA.

(e) Emergency request.

(1) If a AAA is requesting approval to directly provide a service because an uncontrollable or unforeseen situation prevents immediate delivery of the service, the AAA must:

(A) request provisional approval to directly provide the service by contacting the DADS AAA Section Manager by telephone and providing information to DADS as requested; and

(B) if provisional approval is granted by DADS, request final approval to directly provide the service by:

(i) submitting to DADS, within 36 hours after DADS grants provisional approval, a written explanation supporting the condition described in subsection (c)(1) of this section and a statement of the period of time for which the AAA requests to directly provide the service; and

(ii) providing any additional information to DADS upon request.

(2) If DADS grants provisional approval for a AAA to directly provide a service because of an emergency situation, the provisional approval is in writing and effective until DADS either grants or denies final approval.

(3) If DADS grants final approval for a AAA to directly provide a service because of an emergency situation, the final approval is for a time period determined by DADS that:

(A) does not exceed 180 days; or

(B) does not extend past the effective period of the AAA's current area plan.

(f) Extension of approval period.

(1) A AAA may request that DADS grant an extension of a time period that the AAA may directly provide a service, as described in subsections (d)(2) and (e)(2) and (3) of this section.

(2) A AAA's request to grant an extension must be in writing and include an explanation of why the extension is necessary.

(3) Based on the written request, DADS may grant an extension of an approval period that does not extend past the effective period of a AAA's current area plan.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2011.

TRD-201101129

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 438-3734



## SUBCHAPTER F. MANAGEMENT AND OVERSIGHT

### 40 TAC §85.501, §85.502

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive

commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new sections implement Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§85.501. AAA Funding Allocation Formula for Older Americans Act Programs.

(a) Purpose. This section describes the formula used to distribute funds to a AAA in accordance with the Older Americans Act, §305(a)(2)(C).

(b) AAA State General Revenue Base. A AAA is allocated a base amount of \$60,000.

(c) AAA Administration Base. In accordance with the Older Americans Act, an administration pool comprised of 10 percent of the federal allocation of funds to AAAs is established. From this amount, a AAA is allocated no less than \$85,000.

(d) AAA Supportive Services Base. A AAA is allocated a base amount of \$115,000 for Title III Supportive Services.

(e) AAA Nutrition Services Base. A AAA is allocated a base amount of \$100,000 for Title III Nutrition Services.

(f) AAA Rural Allocation. The rural allocation factor is based upon a three part formula:

(1) a AAA with a population density factor that exceeds the statewide average of persons 60 years of age and older per square mile receives no rural allocation;

(2) a AAA with a population density factor greater than 50 percent of the statewide average of persons 60 years of age and older per square mile, but less than the statewide average, receives a rural allocation of \$15,000; and

(3) a AAA with a population density factor of less than 50 percent of the statewide average of persons 60 years of age and older per square mile receives a rural allocation of \$30,000.

(g) Allocation of Remaining Funds. All remaining funds, except the Title VII Ombudsman Activity Grant, are allocated in accordance with the following formula of weighted factors:

(1) the total AAA region's population 60 years of age and older, weighted at 40 percent;

(2) the total AAA region's population 60 years of age and older who are minorities, weighted at 10 percent; and

(3) the total AAA region's population 60 years of age and older who are living on incomes below the poverty level, weighted at 50 percent.

(h) Allocation of Title VII Ombudsman Activity Grant. A AAA will be allocated a base amount of \$3,000. Remaining funds are allocated based on the following factors:

(1) the number of licensed nursing facility beds based upon the most recent DADS Long-term Care Regulatory Facility Report for the prior state fiscal year, weighted at 50 percent;

(2) the number of licensed assisted living facilities based upon the most recent DADS Long-term Care Regulatory Facility Report for the prior state fiscal year, weighted at 25 percent; and

(3) the number of certified volunteer Ombudsmen based upon the DADS Active Volunteer Ombudsman Report for the prior state fiscal year, weighted at 25 percent.

§85.502. Unspent Award Funds.

(a) Purpose. This section describes the process for handling award funds that are not spent by a AAA at the end of a federal fiscal year, including the process for distributing funds in the statewide carryover pool.

(b) Award funds. DADS allocates to a AAA federal funds awarded under the Older Americans Act to spend in implementing its area plan during a federal fiscal year. These funds are referred to in this section as "award funds."

(c) Unspent award funds.

(1) If, at the end of a federal fiscal year, a AAA has unspent award funds that were received in the first six-month period of the federal fiscal year, the unspent funds are handled as follows:

(A) the AAA may spend up to five percent of the unspent award funds in the next federal fiscal year to implement its area plan; and

(B) DADS places any unspent award funds that are more than five percent in the statewide carryover pool.

(2) The AAA may spend any unspent award funds received in the second six-month period of the fiscal year in the next federal fiscal year to implement its area plan.

(d) Distribution of statewide carryover pool. The funds placed in the statewide carryover pool, as described in subsection (c)(1)(B) of this section, are distributed by DADS:

(1) in accordance with the formula described in subsection (e) of this section; and

(2) to a AAA for the fiscal year before the distribution will occur if the following criteria are met:

(A) the AAA has submitted to DADS all reports listed in the AAA Report Due Date Schedule by the time and date listed on such schedule or by the time and date of an extension granted by DADS in accordance with §85.201(d)(3) of this chapter (relating to AAA Administrative Responsibilities);

(B) as determined by DADS, the AAA meets all performance measures set by DADS under the contract or is above or below such measures within five percent;

(C) DADS did not place unspent award funds of the AAA in the statewide carryover pool in accordance with subsection (c)(1)(B) of this section;

(D) the AAA has not had a Level Three Sanction or Level Four Sanction imposed by DADS in accordance with §81.13 of this title (relating to Compliance with Contractor Responsibilities, Rewards and Sanctions);

(E) if unallowable costs have been identified for the AAA in accordance with §85.202(e) of this chapter (relating to AAA Fiscal Responsibilities), the AAA has either refunded the amount of such costs to DADS or is current under a payment agreement approved by DADS to refund the amount of such costs;

(F) the AAA has met the adequate proportion requirement, which may include a waiver granted by DADS, in accordance with §85.202(k) of this chapter; and

(G) the AAA has met the requirement of ombudsman maintenance of effort, as required by §85.401(t)(1) of this chapter (relating to Long-Term Care Ombudsman Program), unless a waiver was granted by DADS under §85.401(t)(3) of this chapter.

(e) Formula for distribution of statewide carryover pool. DADS distributes funds from the statewide carryover pool to AAAs



that meet the criteria described in subsection (d) of this section as follows:

(1) 50 percent of the funds are distributed in equal amounts to the qualifying AAAs; and

(2) 50 percent of the funds are distributed to the qualifying AAAs in accordance with §85.501(g) and (h)(1) - (3) of this chapter (relating to the AAA Funding Allocation Formula for Older Americans Act Programs).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2011.

TRD-201101130

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 438-3734



## CHAPTER 86. NATIONAL SENIOR SERVICES CORPS PROGRAM

### 40 TAC §86.1

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new §86.1, concerning guidelines to distribute funds to entities operating a National Senior Services Corps program, in new Chapter 86, National Senior Services Corps Program.

#### BACKGROUND AND PURPOSE

The proposed new section describes the guidelines used to determine the proportion of state money distributed to entities operating a program under the National Senior Services Corps, as required by Texas Human Resources Code, §101.024.

#### SECTION-BY-SECTION SUMMARY

Proposed new §86.1 describes the guidelines used to determine the proportion of state money distributed to entities operating a program under the National Senior Services Corps, and includes information about DADS' written agreement with the Corporation for National and Community Services.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed new section is in effect, enforcing or administering the new section does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new section will not have an adverse economic effect on small businesses or micro-businesses, because the rules apply only to area agencies on aging (AAAs). AAAs are public or nonprofit agencies or organizations, not small businesses or micro-businesses, which are legal entities formed for the purpose of making a profit.

#### PUBLIC BENEFIT AND COSTS

Gary Jessee, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the new section is in effect, the public benefit expected as a result of enforcing the new section is that agency rules related to the management and oversight functions of DADS regarding AAAs will be clear and consistent with agency practice.

Mr. Jessee anticipates that there will not be an economic cost to persons who are required to comply with the new section. The new section will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Toni Packard at (512) 438-4290 in DADS Access and Intake Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-9R022, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, TX 78714-9030 or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R022" in the subject line.

#### STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Human Resources Code, §101.024, which requires the adoption of rules that establish guidelines or formulas to determine the proportion of state money distributed to local public agencies or private, nonprofit corporations that operate programs to recruit elderly persons to perform voluntary community services or that operate programs under the National Senior Services Corps.

The new section implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021; and Texas Human Resources Code, §101.024.

§86.1. Guidelines to Distribute Funds to Entities Operating a National Senior Services Corps Program.

(a) Purpose. This section describes the guidelines to determine the proportion of state money distributed to entities that operate a program under the National Senior Services Corps, as required by Texas Human Resources Code, §101.024.

(b) National Senior Services Corps programs. Programs operated under the National Senior Services Corps include the Foster Grandparent Program, RSVP, and the Senior Companion Program.

(c) Agreement with CNCS. DADS has a written agreement with the Corporation for National and Community Services (CNCS) in which:

(1) DADS agrees to pay state general revenue DADS receives to fund programs under the National Senior Services Corps to CNCS; and

(2) CNCS agrees to distribute the funds it receives from DADS to entities operating programs under the National Senior Services Corps.

(d) Fund distribution guidelines. The guidelines by which funds are distributed to entities operating a National Senior Services Corps Program are as follows:

(1) entities are distributed current funding based on amounts received by the entities in previous years;

(2) new funding distributed to existing entities is distributed to those entities in equal amounts; and

(3) a new entity receiving new funding receives no more than the lowest amount given to an entity in the previous year's distribution.

(e) Specific amounts in agreement with CNCS. The specific amounts of funding distributed to entities operating a National Senior Services Corps Program are set forth in DADS written agreement with CNCS.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2011.

TRD-201101131

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 438-3734



## CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §97.256, concerning emergency preparedness planning and implementation, and §97.602, concerning administrative penalties, in Chapter 97, Licensing Standards for Home and Community Support Services Agencies.

### BACKGROUND AND PURPOSE

The purpose of the amendments is to comply with House Bill (HB) 2558, 81st Legislature, Regular Session, 2009. HB 2558 amended Texas Health and Safety Code, Chapter 142, by adding §142.0201, relating to Registration for Evacuation and Disaster Preparedness. Section 142.0201 requires a home and community support services agency (HCSSA) to: 1) assist

a client with registering for disaster evacuation assistance through 2-1-1 services provided by the Texas Information and Referral Network; and 2) counsel a client regarding disaster preparedness.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §97.256: updates, reformats and reorganizes the rule to improve its readability and clarity; adds a HCSSA's disaster coordinator and alternate disaster coordinator to, and deletes other agency leaders designated by the administrator from, the list of agency personnel that must be involved with developing, maintaining, and implementing the agency's emergency preparedness and response plan; clarifies how to assign triage categories to clients; requires a HCSSA's emergency preparedness and response plan to include procedures to identify a client who needs evacuation assistance; requires a HCSSA to provide the client with the amount of assistance the client requests to register with the Transportation Assistance Registry accessed by dialing 2-1-1; and requires a HCSSA's list of community disaster resources to include information on how to contact each resource listed.

The proposed amendment to §97.602 updates the rule cites on the administrative penalty tables based on the amendment to §97.256. In addition, a reference to new rules in Texas Administrative Code, Title 40, Part 1, Chapter 91, relating to Hearings Under the Administrative Procedure Act, is added.

### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses, because an agency will not be required to hire new staff, purchase equipment, or be subject to new penalties for noncompliance.

### PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is rules that serve to protect the health and safety of individuals, receiving HCSSA services, during a disaster-related emergency or evacuation.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Sylvia Trevino at (361) 878-3419 in DADS Regulatory Services Division. Written comments on the proposal may be submitted

to Texas Register Liaison, Legal Services-9R020, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R020" in the subject line.

## SUBCHAPTER C. MINIMUM STANDARDS FOR ALL HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

### DIVISION 3. AGENCY ADMINISTRATION

#### 40 TAC §97.256

##### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides DADS with the authority to adopt rules for the licensing and regulation of home and community support services agencies.

The amendment implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §§142.001 - 142.030.

##### §97.256. *Emergency Preparedness Planning and Implementation.*

(a) An agency must have a written emergency preparedness and response plan~~[- based on its risk assessment required by paragraph (1)(D) of this section;]~~ that comprehensively describes its approach to a disaster that could affect the need for its services or its ability to provide those services. The written plan must be based on a risk assessment that identifies the disasters from natural and man-made causes that are likely to occur in the agency's service area. ~~[An agency must maintain documentation of compliance with this section.]~~ With the exception of a freestanding hospice inpatient unit, DADS does not require an agency to physically evacuate or transport a client.

(b) Agency personnel that must be involved with developing, maintaining, and implementing an agency's emergency preparedness and response plan include:

- (1) the administrator;
- (2) the supervising nurse, if the agency is required to employ or contract with a supervising nurse as required by §97.243 of this subchapter (relating to Administrative and Supervisory Responsibilities);
- (3) the agency disaster coordinator; and
- (4) the alternate disaster coordinator.

(c) An agency's written emergency preparedness and response plan must:

(1) designate, by title, an employee, and at least one alternate employee to act as the agency's disaster coordinator;

(2) include a continuity of operations business plan that addresses emergency financial needs, essential functions for client services, critical personnel, and how to return to normal operations as quickly as possible;

(3) include how the agency will monitor disaster-related news and information, including after hours, weekends, and holidays, to receive warnings of imminent and occurring disasters;

(4) include procedures to release client information in the event of a disaster, in accordance with the agency's written policy required by §97.301(a)(2) of this subchapter (relating to Client Records); and

(5) describe the actions and responsibilities of agency staff in each phase of emergency planning, including mitigation, preparedness, response, and recovery.

(d) The response and recovery phases of the plan must describe:

(1) the actions and responsibilities of agency staff when warning of an emergency is not provided;

(2) who at the agency will initiate each phase;

(3) a primary mode of communication and alternate communication or alert systems in the event of telephone or power failure; and

(4) procedures for communicating with:

(A) staff;

(B) clients or persons responsible for a client's emergency response plan;

(C) local, state, and federal emergency management agencies; and

(D) other entities including DADS and other healthcare providers and suppliers.

(e) An agency's emergency preparedness and response plan must include procedures to triage clients that allow the agency to:

(1) readily access recorded information about an active client's triage category in the event of an emergency to implement the agency's response and recovery phases, as described in subsection (d) of this section; and

(2) categorize clients into groups based on:

(A) the services the agency provides to a client;

(B) the client's need for continuity of the services the agency provides; and

(C) the availability of someone to assume responsibility for a client's emergency response plan if needed by the client.

(f) The agency's emergency preparedness and response plan must include procedures to identify a client who may need evacuation assistance from local or state jurisdictions because the client:

(1) cannot provide or arrange for his or her transportation; or

(2) has special health care needs requiring special transportation assistance.

(g) If the agency identifies a client who may need evacuation assistance, as described in subsection (f) of this section, agency personnel must provide the client with the amount of assistance the client requests to complete the registration process for evacuation assistance if the client:

(1) wants to register with the Transportation Assistance Registry, accessed by dialing 2-1-1; and

(2) is not already registered, as reported by the client or legally authorized representative.

(h) An agency must provide and discuss the following information about emergency preparedness with each client:

(1) the actions and responsibilities of agency staff during and immediately following an emergency;

(2) the client's responsibilities in the agency's emergency preparedness and response plan;

(3) materials that describe survival tips and plans for evacuation and sheltering in place; and

(4) a list of community disaster resources that may assist a client during a disaster, including the Transportation Assistance Registry available through 2-1-1 Texas, and other community disaster resources provided by local, state, and federal emergency agencies. An agency's list of community disaster resources must include information on how to contact the resources directly or instructions to call 2-1-1 for more information about community disaster resources.

(i) An agency must orient and train employees, volunteers, and contractors about their responsibilities in the agency's emergency preparedness and response plan.

(1) An agency must take the following action to develop, maintain, and implement an emergency preparedness and response plan:}

(A) An agency must involve the administrator, supervising nurse if applicable, and, based on the agency's organizational chart, other agency leaders designated by the administrator.}

(B) An agency must designate an employee by title, and at least one alternate by title, to act as the agency's disaster coordinator.}

(C) An agency must develop a continuity of operations business plan to address emergency financial needs; essential functions for client services; critical personnel; and how to return to normal operations as quickly as possible.}

(D) An agency must include a risk assessment to identify the potential disasters from natural and man-made causes most likely to occur in the agency's service area.}

(E) An agency must describe the actions and responsibilities for agency staff in each phase of emergency planning, including mitigation, preparedness, response, and recovery. In the response and recovery phases, include actions and responsibilities when warning of an emergency is not provided.}

(F) An agency must develop a plan to monitor disaster-related news and information, including after hours, weekends, and holidays, to receive warnings of imminent and occurring disasters.}

(G) An agency must describe the following for the response and recovery phases of the plan:}

((i) who at the agency will initiate each phase;}

((ii) procedures for communicating with:}

((I) staff;}

((II) clients or someone responsible for a client's emergency response plan;}

((III) local, state, and federal emergency management agencies; and}

((IV) other entities as applicable, including:}

((a) DADS;}

((b) emergency medical services; and}

((c) other healthcare providers and suppliers; and}

((iii) a primary mode of communication and alternate communication or alert systems in the event of telephone or power failure.}

(H) An agency must provide the following information and discuss it with each client as part of the agency's written client care policies on how to handle emergencies in the home related to a disaster:}

((i) the actions and responsibilities of agency staff during and immediately following an emergency;}

((ii) the client's responsibilities in the agency's emergency preparedness and response plan in accordance with §97.282 of this chapter (relating to Client Conduct and Responsibility and Client Rights);}

((iii) a list of community disaster resources that can assist a client during a disaster-related emergency, such as those provided by DADS and local, state, and federal emergency management agencies, including the special needs registry maintained by the state; and}

((iv) materials that describe survival tips and plans for evacuation and sheltering in place.}

(I) An agency must develop procedures in accordance with §97.301(a)(2) of this chapter (relating to Client Records) to release client information as allowed by law in the event of a disaster-related emergency.}

(J) An agency must develop procedures to triage clients that allow the agency to:}

((i) categorize clients into groups based on the following:}

((I) the services provided by the agency;}

((II) the need for continuity of services provided by the agency; and}

((III) the availability of someone to assume responsibility for a client's emergency response plan if needed by the client;}

((ii) identify a client who may need evacuation assistance from local or state jurisdictions;}

((iii) readily access recorded information about a client's triage category in the event of an emergency to coordinate and communicate as required by subparagraph (G) of this paragraph to implement the agency's response and recovery phases.}

(K) An agency must develop and implement procedures as part of the agency's staffing policies to orient and train employees, volunteers, and contractors about their responsibilities in the agency's emergency preparedness and response plan.}

(j) ~~[(L)]~~ An agency must complete an internal review of the plan at least annually, and after each actual emergency response, to evaluate its effectiveness and to update the plan as needed.

(k) ~~[(M)]~~ As part of the annual internal review, an agency must test the response phase of its ~~[the]~~ emergency preparedness and response plan in a planned drill if not tested during an actual emergency response. Except for a freestanding hospice inpatient unit, a planned drill can be limited to the agency's procedures for communicating with staff.

(l) ~~[(2)]~~ An agency must make a good faith effort to comply with the requirements of this section during a disaster. If the agency is unable to comply with any of the requirements of this section, it must document in the agency's records attempts of staff to follow procedures outlined in the agency's emergency preparedness and response plan.

(m) ~~[(3)]~~ An agency is not required to continue to provide care to clients in emergency situations that are beyond the agency's control and that make it impossible to provide services, such as when roads are impassable or when a client relocates to a place unknown to the agency. An agency may establish links to local emergency operations centers to determine a mechanism by which to approach specific areas within a disaster area in order for the agency to reach its clients.

(n) ~~[(4)]~~ If written records are damaged during a disaster, the agency must not reproduce or recreate client records except from existing electronic records. Records reproduced from existing electronic records must include:

- (1) ~~[(A)]~~ the date the record was reproduced;
- (2) ~~[(B)]~~ the agency staff member who reproduced the record; and
- (3) ~~[(C)]~~ how the original record was damaged.

(o) ~~[(5)]~~ Notwithstanding the provisions specified in Division 2 of this subchapter (relating to Conditions of a License), no later than five working days after an agency temporarily relocates a place of business, or temporarily expands its service area resulting from the effects of an emergency or disaster, an agency must notify and provide the following information to the DADS Home and Community Support Services Agencies licensing unit: [no later than five working days after any of the following temporary changes resulting from the effects of an emergency or disaster. The notice and information must be submitted by fax or e-mail. If fax and e-mail are unavailable, notifications can be provided by telephone, but must be provided in writing as soon as possible. If communication with the DADS licensing unit is not possible, an agency may fax, e-mail, or telephone the designated survey office to provide notification.]

(1) ~~[(A)]~~ if [H] temporarily relocating a place of business; [the agency must provide DADS with]

(A) ~~[(i)]~~ the license number for the place of business and the date of ~~[temporary]~~ relocation;

(B) ~~[(ii)]~~ the physical address and phone number of the ~~[temporary]~~ location; and

(C) ~~[(iii)]~~ the date the [an] agency returns to a place of business after the [temporary] relocation; or[-]

(2) ~~[(B)]~~ if [H] temporarily expanding the service area to provide services during a disaster[-; the agency must provide DADS with];

(A) ~~[(i)]~~ the license number and revised boundaries of the ~~[original]~~ service area;

(B) ~~[(ii)]~~ the date the [of temporary] expansion begins; and

(C) ~~[(iii)]~~ the date the [an agency's temporary] expansion [of its service area] ends.

(p) An agency must provide the notice and information described in subsection (o) of this section by fax or email. If fax and email are unavailable, the agency may notify the DADS licensing unit by telephone, but must provide the notice and information in writing as soon as possible. If communication with the DADS licensing unit is not possible, the agency must provide the notice and information by fax, e-mail, or telephone to the designated survey office.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2011.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 438-3734



## SUBCHAPTER F. ENFORCEMENT

### 40 TAC §97.602

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides DADS with the authority to adopt rules for the licensing and regulation of home and community support services agencies.

The amendment implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §§142.001 - 142.030.

§97.602. *Administrative Penalties.*

(a) Assessing penalties. DADS may assess an administrative penalty against a person who violates:

- (1) the statute;
- (2) a provision in this chapter for which a penalty may be assessed; or
- (3) Occupations Code, §102.001, Soliciting Patients, if related to the provision of home health, hospice, or personal assistance services.

(b) Criteria for assessing penalties. DADS assesses administrative penalties in accordance with the schedule of appropriate and graduated penalties established in this section.

(1) The schedule of appropriate and graduated penalties for each violation is based on the following criteria:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients;

(B) the history of previous violations by a person or a controlling person with respect to that person;

(C) whether the affected agency identified the violation as part of its internal quality assurance process and made a good faith, substantial effort to correct the violation in a timely manner;

(D) the amount necessary to deter future violations;

(E) efforts made to correct the violation; and

(F) any other matters that justice may require.

(2) In determining which violation warrants a penalty, DADS considers:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients; and

(B) whether the affected agency identified the violation as part of its internal quality assurance program and made a good faith, substantial effort to correct the violation in a timely manner.

(c) Opportunity to correct. Except as provided in subsections (e) and (f) of this section, DADS provides an agency with an opportunity to correct a violation in accordance with the time frames established in §97.527(g)(2) of this chapter (relating to Post-Survey Procedures) before assessing an administrative penalty if a plan of correction has been implemented.

(d) Minor violations.

(1) DADS may not assess an administrative penalty for a minor violation unless the violation is of a continuing nature or is not corrected in accordance with an accepted plan of correction.

(2) DADS may assess an administrative penalty for a subsequent occurrence of a minor violation when cited within three years from the date the agency first received written notice of the violation.

(3) DADS does not assess an administrative penalty for a subsequent occurrence of a minor violation when cited more than three years from the date the agency first received written notice of the violation.

(e) No opportunity to correct. DADS may assess an administrative penalty without providing an agency with an opportunity to correct a violation if DADS determines that the violation:

(1) results in serious harm to or death of a client;

(2) constitutes a serious threat to the health or safety of a client;

(3) substantially limits the agency's capacity to provide care;

(4) involves the provisions of Texas Human Resources Code, Chapter 102, Rights of the Elderly;

(5) is a violation in which a person:

(A) makes a false statement, that the person knows or should know is false of a material fact:

(i) on an application for issuance or renewal of a license or in an attachment to the application; or

(ii) with respect to a matter under investigation by DADS;

(B) refuses to allow a representative of DADS to inspect a book, record, or file required to be maintained by an agency;

(C) willfully interferes with the work of a representative of DADS or the enforcement of this chapter;

(D) willfully interferes with a representative of DADS preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter;

(E) fails to pay a penalty assessed by DADS under this chapter not later than the 10th day after the date the assessment of the penalty becomes final; or

(F) fails to submit:

(i) a plan of correction not later than the 10th day after the date the person receives a statement of licensing violations; or

(ii) an acceptable plan of correction not later than the 30th day after the date the person receives notification from DADS that the previously submitted plan of correction is not acceptable.

(f) Violations relating to Advance Directives. As provided in Texas Health and Safety Code, §142.0145, DADS assesses an administrative penalty of \$500 for a violation of §97.283 of this chapter (relating to Advance Directives) without providing an agency with an opportunity to correct the violation.

(g) Penalty calculation and assessment.

(1) Each day that a violation occurs before the date on which the person receives written notice of the violation is considered one violation.

(2) Each day that a violation occurs after the date on which an agency receives written notice of the violation constitutes a separate violation.

(h) Schedule of appropriate and graduated penalties.

(1) If two or more rules listed in paragraphs (2) and (3) of this subsection relate to the same or similar matter, one administrative penalty may be assessed at the higher severity level violation.

(2) Severity Level A violations.

(A) The penalty range for a Severity Level A violation is \$100 - \$250 per violation.

(B) A Severity Level A violation is a violation that has or has had minor or no client health or safety significance.

(C) DADS assesses a penalty for a Severity Level A violation only if the violation is of a continuing nature or was not corrected in accordance with an accepted plan of correction.

(D) DADS may assess a separate Severity Level A administrative penalty for each of the rules listed in the following table. Figure: 40 TAC §97.602(h)(2)(D)

(3) Severity Level B violations.

(A) The penalty range for a Severity Level B violation is \$500 - \$1,000 per violation.

(B) A Severity Level B violation is a violation that:

(i) results in serious harm to or death of a client;

(ii) constitutes an actual serious threat to the health or safety of a client; or

(iii) substantially limits the agency's capacity to provide care.

(C) The penalty for a Severity Level B violation that:

(i) results in serious harm to or death of a client is \$1,000;

(ii) constitutes an actual serious threat to the health or safety of a client is \$500 - \$1,000; and

(iii) substantially limits the agency's capacity to provide care is \$500 - \$750.

(D) As provided in subsection (e) of this section, a Severity Level B violation is a violation for which DADS may assess an administrative penalty without providing an agency with an opportunity to correct the violation.

(E) DADS may assess a separate Severity Level B administrative penalty for each of the rules listed in the following table. Figure: 40 TAC §97.602(h)(3)(E)

(i) Violations for which DADS may assess an administrative penalty of \$500.

(1) DADS may assess an administrative penalty of \$500 for each of the violations listed in subsection (e)(4) and (5) of this section, without providing an agency with an opportunity to correct the violation.

(2) A separate penalty may be assessed for each of these violations.

(j) Proposal of administrative penalties.

(1) If DADS assesses an administrative penalty, DADS provides a written notice of violation letter to an agency. The notice includes:

(A) a brief summary of the violation;

(B) the amount of the proposed penalty; and

(C) a statement of the agency's right to a formal administrative hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(2) An agency may accept DADS' determination not later than 20 days after the date on which the agency receives the notice of violation letter, including the proposed penalty, or may make a written request for a formal administrative hearing on the determination.

(A) If an agency notified of a violation accepts DADS' determination, the DADS commissioner or the DADS commissioner's designee issues an order approving the determination and ordering that the agency pay the proposed penalty.

(B) If an agency notified of a violation does not accept DADS' determination, the agency must submit to the Health and Human Services Commission a written request for a formal administrative hearing on the determination and must not pay the proposed penalty. Remittance of the penalty to DADS is deemed acceptance by the agency of DADS' determination, is final, and waives the agency's right to a formal administrative hearing.

(C) If an agency notified of a violation fails to respond to the notice of violation letter within the required time frame, the DADS commissioner or the DADS commissioner's designee issues an order approving the determination and ordering that the agency pay the proposed penalty.

(D) If an agency requests a formal administrative hearing, the hearing is held in accordance with the statute, §142.0172, §142.0173, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Filed with the Office of the Secretary of State on March 21, 2011.

TRD-201101135

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 438-3734



## CHAPTER 98. ADULT DAY CARE AND DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §98.42, concerning safety, in Subchapter C, Facility Construction Procedures, and new §98.64, concerning emergency preparedness and response, in Subchapter D, Licensure and Program Requirements, in Chapter 98, Adult Day Care and Day Activity and Health Services Requirements.

### BACKGROUND AND PURPOSE

The Department of Aging and Disability Services (DADS) is proposing amendments to Chapter 98, Adult Day Care and Day Activity and Health Services Requirements. DADS initiated these amendments in response to challenges faced during recent hurricane seasons. The purpose of the amendment is to ensure the health, safety, and well-being of adult day care clients during and after a disaster.

The proposed rule amendment reorganizes §98.42 and adds specific requirements relating to the National Fire Protection Association standards. Proposed new §98.64 requires licensed adult day care facilities to develop emergency preparedness and response plans that address core functions of emergency management and to designate an emergency preparedness coordinator, a facility staff person who has the authority to manage the facility's response to an emergency situation in accordance with the plan.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §98.42 deletes the current requirements related to disaster plan information. The amendment also clarifies existing provisions of §98.42 and adds requirements relating to the inspection, testing, and maintenance of fire alarm systems, sprinkler systems, and generators in accordance with the National Fire Protection Association standards.

Proposed new §98.64 consists of definitions used in the section; administrative procedures regarding emergency preparedness and response; requirements for emergency preparedness and response plans, including specific requirements related to the eight core functions of emergency management; staff training procedures; and requirements for a fire safety plan.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment and new section are in effect, enforcing or administering the amendment and new section does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment and new section will not have an adverse economic effect on small businesses or micro-businesses because licensed facilities are currently required to have and follow a written disaster plan that contains procedures to be followed in a disaster. No fiscal implications are expected in revising a facility's written disaster plan to comply with the new emergency preparedness and response rules in §98.64. The proposed new requirements are not expected to affect a facility's decision to evacuate or shelter-in-place during an emergency situation; therefore, the proposed amendment and new section are not expected to increase a facility's costs associated with protecting residents and staff in an emergency situation.

#### PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendment and new section are in effect, the public benefit expected as a result of enforcing the new sections and repeal is an increased level of detail for ensuring the safety, health, and well-being of facility residents during and after an emergency situation, including a fire.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the amendment and new section. The amendment and new section will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Jennifer Morrison at (512) 438-4624 in DADS' Regulatory Services. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-6R042, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday, therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the

last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 6R042" in the subject line.

## SUBCHAPTER C. FACILITY CONSTRUCTION PROCEDURES

### 40 TAC §98.42

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Human Resource Code, Chapter 103, which provides DADS with the authority to license and regulate adult day care facilities.

The amendment implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

#### §98.42. *Safety.*

~~{(a) Disaster plans. The facility must have a written plan with procedures to be followed in an internal or external disaster and for the care of casualties. The rules must address areas, such as: emergency evacuation transportation; adequate sheltering arrangements; supplies; staffing; emergency equipment; individual identification of clients and transfer of records; responding to family inquiries; and post-disaster activities, including emergency power, food, water, and transportation. Plans dealing with natural disasters, such as hurricanes, floods and tornadoes, must be coordinated with the local emergency management coordinator. Information about the local emergency management coordinator may be obtained from the office of the local mayor or county judge.}~~

#### (a) ~~{(b)}~~ Environmental safety.

(1) The physical plant safety requirements are designed to provide safety to the clients, participants, or adult individuals receiving day care.

(2) The facility must conform to all applicable state laws and local ordinances pertaining to occupancy. When these laws, codes, and ordinances are more stringent than the standards in this section, the more stringent requirements govern. If state laws or local codes or ordinances conflict with the requirements of these standards, DADS' Regulatory Services Licensing and Credentialing Section will be so informed so that these conflicts may be legally resolved.

(3) The facility must meet the provisions and requirements concerning accessibility for individuals with disabilities in the following laws and regulations: the Americans with Disabilities Act (ADA) of 1990 (Title 42, United States Code, Chapter 126); Title 28, Code of Federal Regulations, Part 35; Texas Government Code, Chapter 469, Elimination of Architectural Barriers; and 16 TAC, Chapter 68, Elimination of Architectural Barriers. Plans for new construction, substantial renovations, modifications, and alterations must be submitted to the Texas Department of Licensing and Regulation (Attn: Elimination of Architectural Barriers Program) for accessibility approval under Texas Government Code, Chapter 469. At least 50% of the client restrooms must be in accordance with ADA. Exception: Facilities licensed for 45 or fewer persons may provide one unisex restroom in accordance with accessibility requirements.



(4) DADS' jurisdiction extends beyond the licensed facility when the licensed area is only a part of a building or floor that is not fire-separated in accordance with the Life Safety Code, NFPA 101, 2000 edition, §16.1.2, New Day-Care Centers, or Life Safety Code, NFPA 101, 2000 edition, §17.1.2, Existing Day-Care Centers with Mixed Occupancies.

(b) [(e)] Life Safety Code, NFPA 101, 2000 edition.

(1) The principles of the Life Safety Code, NFPA 101, 2000 edition, under Chapter 16 for new day-care centers or Chapter 17 for existing day-care centers, and operating features under §16.7 or §17.7, must be used in establishing life safety requirements for adult day care facilities, with the interpretation and exceptions as listed in paragraphs (2) and (3) of this subsection. Chapter 16 of the Life Safety Code, NFPA 101, 2000 edition, is applicable to new construction, conversions of existing unlicensed buildings, remodeling, and additions conducted after April 1, 2007. Chapter 17 of the Life Safety Code, NFPA 101, 2000 edition, is applicable to existing adult day-care facilities licensed before April 1, 2007. Life safety features and equipment installed in existing buildings that are now in excess of what is required by the Life Safety Code, NFPA 101, 2000 edition, ~~[for existing facilities]~~ must continue to be maintained or may be completely removed if prior written approval is obtained from DADS.

(2) Interpretations of the Life Safety Code, NFPA 101, 2000 edition, chapters 16 and 17, are as follows:

(A) The principles of chapters 16 and 17 apply to any size facility requiring licensing with four or more clients or participants.

(B) The principles of §16.1.4.2 and §17.1.4.2 relating to a building or portion thereof used less than 24 hours per day to house more than three adults requiring care, maintenance, and supervision by other than a relative apply to all facilities requiring licensing. A client must be ambulatory or semi-ambulatory and must not be bedridden. A client must not exhibit behavior that is harmful to the client or others.

(C) The manual fire alarm system and automatic smoke detection system must be installed in accordance with NFPA 72 National Fire Alarm Code series and state fire marshal licensing requirements.

(D) The facility must have a program to inspect, test, and maintain the fire alarm system and must execute the program at least once every six months.

(i) The facility must contract with a company that is registered by the State Fire Marshal's Office to execute the program.

(ii) The person who performs a service under the contract must be licensed by the State Fire Marshal's Office to perform the service and must complete, sign, and date an inspection form similar to the inspection and testing form in NFPA 72 for a service provided under the contract.

(iii) The facility must ensure fire alarm system components that require visual inspection are visually inspected in accordance with NFPA 72.

(iv) The facility must ensure fire alarm system components that require testing are tested in accordance with the NFPA 72.

(v) The facility must ensure fire alarm system components that require maintenance are maintained in accordance with NFPA 72.

(vi) The facility must ensure smoke dampers are inspected and tested in accordance with NFPA 101, 2000 Edition.

(vii) The facility must maintain onsite documentation of compliance with this subsection and have available for examination by DADS, operation and maintenance manuals, and a written sequence of operation.

(E) If the facility has a complete NFPA 13 system, the facility must have a program to inspect, test, and maintain the sprinkler system and must execute the program at least once every six months.

(i) The facility must contract with a company that is registered by the State Fire Marshal's Office to execute the program.

(ii) The person who performs a service under the contract must be licensed by the State Fire Marshal's Office to perform the service and must complete, sign, and date an inspection form similar to the inspection and testing form in NFPA 25 for a service provided under the contract.

(iii) The facility must ensure sprinkler system components that require visual inspection are visually inspected in accordance with NFPA 13 and 25.

(iv) The facility must ensure sprinkler system components that required testing are tested in accordance with the NFPA 13 and 25.

(v) The facility must ensure sprinkler system components that require maintenance are maintained in accordance with NFPA 13 and 25.

(vi) The facility must ensure that individual sprinkler heads are inspected and maintained in accordance with NFPA 13 and 25.

(vii) The facility must maintain onsite documentation of compliance with this subsection and have available for examination by DADS as built drawings, operation and maintenance manuals, and a written sequence of operation.

(F) ~~[(D)]~~ All facilities must follow the Life Safety Code, NFPA 101, 2000 edition, chapters 16 or 17, including the following:

(i) If a center is located in a building containing mixed occupancies, the occupancies must be separated by one-hour fire barriers.

(ii) Each floor occupied by clients must have access to two remote exits in accordance with Chapter 7, Means of Egress. ~~[Doors in the means of egress must be equipped with hardware that opens with a single motion. Doors must swing in the direction of egress for occupant loads greater than 50 occupants.]~~

(I) Doors in the means of egress must be equipped with hardware that opens with a single motion.

(II) Doors must swing in the direction of egress for occupant loads greater than 50 occupants.

(iii) Every room or space normally subject to client occupancy, other than bathrooms or any room with attended individual clients, must have at least one outside window for emergency rescue or ventilation. Such window must be able to be opened from the inside without the use of tools and provide a clear opening of not less than 20 inches in width, 24 inches in height, and 5.7 sq. ft. (821 sq. in.) in area (minimum width of 20 inches by 41.2 inches high and minimum height of 24 inches by 34.2 inches wide). The bottom of the opening must be not more than 44 inches (112 cm.) above the floor. In rooms located greater than three stories above grade, the openable clear height, width, and area of the window may be modified to the dimensions necessary for ventilation. Exceptions are:

(I) buildings protected throughout by an approved, supervised automatic sprinkler system in accordance with §9.7;

(II) rooms or spaces with a door leading directly to the outside of the building; or

(III) in existing facilities, rooms smaller than 250 square feet.

(iv) Interior finish in stairways, corridors, and lobbies must be Class A. All other walls and ceilings must be Class A or Class B interior finish in accordance with Life Safety Code, NFPA 101, 2000 edition, §10.2.3. Flame spread is the rate of fire travel along the surface of a material. (This is different from other requirements for time-rated "burn through" resistance ratings such as one-hour rated.) Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).

(v) Floor finish materials within corridors and exits must be Class I or Class II in accordance with §10.2.7 in new construction or new installations of flooring. Replacement or newly installed floor finish materials must be Class I or II. Existing floor finish materials in good condition may remain in use in accordance with §10.2.

(vi) A smoke detection system must be installed in accordance with §9.6 with placement of detectors in each story in front of the doors to the stairways and in the corridors of all floors occupied by the day-care occupancy. Detectors also must be installed in lounges, recreation areas, dining areas, and sleeping rooms in the center. [Maintenance and testing must be conducted semiannually on fire alarm systems by a person licensed by the State of Texas. The facility must have a written contract with a fire alarm firm to perform the inspection, test, and maintenance requirements of NFPA 72 semiannually. The firm must have an Alarm Certificate of Registration number from the Texas State Fire Marshal's Office. Inspections stipulated to in the contract must actually be performed by the firm cited in the contract. The person performing the semiannual service must have an individual fire alarm license from the Texas State Fire Marshal's Office. A licensed individual must not perform the contract inspections, tests, and contracted maintenance unless the individual is an employee or agent of a registered firm. All other NFPA 72 requirements must be performed and documented by a licensed individual. Smoke detector sensitivity must be checked within one year after installation and every alternate year thereafter in accordance with NFPA 72. Documents, including as-built installation drawings, operation and maintenance manuals, and a written sequence of operation, must be available for examination by DADS.]

(vii) Fire department notification must be accomplished in accordance with §9.6.4, except in day-care centers with not more than 100 clients.

(3) Exceptions to the Life Safety Code, NFPA 101, 2000 edition, chapters 16 or 17, are as follows.

(A) All required smoke detectors must be powered by the facility electrical system and be interconnected with the fire alarm system.

(B) Reference to apartment buildings in §16.1.2 or §17.1.2 must be deleted. Any floor above or below the floor of exit discharge that is used by semi-ambulatory clients, or those whose disability prevents them from taking appropriate action for self-preservation in emergencies, must be provided with smoke compartmentation.

(C) Emergency lighting is not required for means of egress if the facility operation is during daylight hours and if natural

light, direct or borrowed, is provided so that the means of egress is usable in emergencies.

(D) Special protective electrical receptacle covers are not required.

(E) NFPA 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, is not applicable if the facility has residential-type cooking equipment.

(F) Public corridors must not be used for return or supply air systems.

(G) Residential-type heating units or heating units designed for attic installations must not be considered to be units requiring furnace room construction as specified under §16.3.2.1 or §17.3.2.1.

(H) New additions or remodeling must be as required for new construction in accordance with paragraph (4) of this subsection.

(I) Sprinkler system for a janitor's closet as specified under §16.3.2.1 or §17.3.2.1 is not required unless the building has a complete NFPA 13 system.

(4) For new construction, DADS requires conformance to the following codes, except that DADS may accept other nationally recognized codes that are locally enforced.

(A) If the municipality has a building code and a plumbing code, then those codes govern in those areas of construction. Where local codes or ordinances are applicable, the most restrictive parts concerning the same subject item apply unless otherwise determined by the authority having jurisdiction for local codes and the licensing agency.

(B) In the absence of local municipal codes or ordinances, nationally recognized codes must be used, such as the International Building Code and the compatible International Codes published by the International Code Council. These nationally recognized codes, when used, must all be publications of the same group or organization to assure the intended continuity.

(C) Heating, ventilating, and air-conditioning (HVAC) systems must be designed and installed in accordance with NFPA 90A and NFPA 90B, as applicable, and the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE), except as may be modified in this subchapter. Buildings required to meet NFPA 90A must have automatic shutdown upon initiation of the fire alarm system, in accordance with NFPA 90A, §4.4.

(D) Electrical and illumination systems must be designed and installed in accordance with NFPA 70 and the *Lighting Handbook* of the Illuminating Engineering Society (IES) of North America, except as may be modified in this subchapter. [Minimum illumination must be 20 foot candles in the toilets, bathing, and general use areas such as living, dining, corridors, and lobbies. Minimum illumination must be 50 foot candles in the kitchen, medication or food preparation areas, and activity areas for handicrafts or reading.]

(i) Minimum illumination must be 20 foot candles in the toilets, bathing, and general use areas, such as living areas, dining areas, corridors, and lobbies.

(ii) Minimum illumination must be 50 foot candles in the kitchen, medication or food preparation areas, and activity areas for handicrafts or reading.

(5) An existing building either occupied as an adult day care facility at the time of initial inspection by DADS, or converted to occupancy as an adult day care facility, must meet all local requirements pertaining to the building for that occupancy. DADS may require

the facility sponsor or licensee to submit evidence that local requirements are satisfied.

(6) Adult day care facilities must be of recognized permanent type construction as distinguished from movable buildings or construction. Buildings must be structurally sound with regard to actual or expected dead, live, and wind loads. DADS may require submission of evidence to this effect. Foundations must be permanent, structurally sound for local soil conditions, and in good repair. A letter from a registered professional engineer may be required as validation of a permanent and structurally sound foundation. [The walking surface must be consistent, nominally level, and without abrupt changes in elevation, trip hazards, or gaps. Floor surfaces may be on different elevations if connected with ramps or steps in accordance with the Life Safety Code, NFPA 101, 2000 edition, means of egress chapter.]

(7) The walking surface in a facility and at the exit discharge must be consistent, nominally level, and without abrupt changes in elevation, trip hazards, or gaps. Floor surfaces may be on different elevations if connected with ramps or steps in accordance with the Life Safety Code, NFPA 101, 2000 edition, means of egress chapter.

~~[(7) Electrical and mechanical systems must be safe and in working order. DADS may require the facility sponsor or licensee to submit evidence to this effect, consisting of a report from the fire marshal or city or county building official having jurisdiction or a report from a registered professional engineer.]~~

(8) DADS will consider a written request from the facility for a waiver of requirements which, if strictly applied, would clearly be impractical in DADS' judgment for existing buildings and structures that have been converted to adult day care occupancy. Any of these modifications will be allowed only to the extent that reasonable life safety against the hazards of fire, explosion, structural, or other building failure and panic are provided and maintained.

(c) ~~[(d)]~~ Personal safety.

(1) Fire safety.

(A) The facility must maintain an onsite copy of the annual fire marshal inspection report by the local fire marshal.

~~[(A) Fire safety must be observed at all times.]~~

~~[(i) Fire drills must be conducted every month with all occupants of the building participating in the drills. Drills must be held at expected and unexpected times and under varying conditions to simulate the unusual conditions that can occur in an actual emergency. Drill participants must relocate to a predetermined location and remain at such location until a recall or dismissal signal is given. All fire drills must be documented on a form provided by DADS.]~~

~~[(ii) Fire prevention inspections must be conducted monthly by a trained senior member of the staff. The facility director or another staff member must inspect all exit facilities daily to ensure that all stairways, doors, and other exits are in proper condition. A copy of the latest inspection report must be posted in a conspicuous place in the facility. Copies of monthly inspection reports for the previous year must be maintained at the facility.]~~

~~[(iii) A copy of the annual fire marshal inspection by the local fire marshal must be available on site.]~~

(B) Storage items must be neatly arranged and placed in the facility to minimize fire hazard. Gasoline, volatile materials, paint, and similar products must not be stored in the building housing clients unless approved by the local fire marshal. Accumulations of extraneous material and refuse are not permitted in the facility.

(C) Alcohol based hand rub dispensers, if installed, must be installed by the facility in accordance with NFPA 101 standards.

~~[(D) [(C)] The building must be kept in good repair; electrical, heating, and cooling systems must be maintained in a safe manner. Electrical appliances, devices, and lamps must be used in a manner that prevents overloaded circuits. Any extension cords in excess of six feet must be shielded or protected].~~

(E) The facility's electrical, mechanical, heating, and cooling systems must be maintained in a safe manner and in working order. DADS may require the facility sponsor or licensee to submit evidence to this effect, consisting of a report from the fire marshal or city or county building official having jurisdiction or a report from a registered professional engineer.

(F) Electrical appliances, devices, and lamps used in the facility must be used in a manner that prevents overloaded circuits.

(G) If the facility uses extension cords in excess of six feet, they must be shielded or protected.

~~[(D) The facility must report all fires, serious injuries, deaths, or disasters within 24 hours after the occurrence to DADS Consumer Rights and Services at 1-800-458-9858. A telephone report concerning fires must be followed by a written report on DADS' Fire Report form.]~~

~~[(E) The facility must develop and conspicuously post throughout the facility an emergency evacuation plan approved by the local fire marshal having jurisdiction and DADS.]~~

(H) [(F)] Smoking regulations must be established and enforced by the facility and conspicuously posted in the facility. [All smoking must be supervised. Ashtrays of noncombustible material and safe design must be provided.]

(i) All smoking must be supervised.

(ii) The facility must prohibit smoking in any room, ward, or compartment where flammable liquids, combustible gas, or oxygen are used or stored and in any other hazardous location. The facility must post a "No Smoking" sign in these areas.

(iii) Ashtrays of noncombustible material and safe design must be provided in all areas where smoking is permitted.

(iv) Metal containers of substantial gauge or any UL- or FM-approved containers with self-closing cover devices into which ashtrays can be emptied must be provided in all areas where smoking is permitted.

(I) [(G)] The facility must have an emergency fire lane for access of fire apparatus if required by local authorities.

[(H) There must be at least one telephone in the facility available to either staff or clients to use in case of an emergency. Emergency telephone numbers must be posted conspicuously at or near the telephone.]

(J) [(H)] An initial pressure test of facility gas lines from the meter must be provided. Additional pressure tests are required when the facility has major renovations or additions during which the gas service is interrupted. Testing must be performed by a person licensed with the State Board of Plumbing Examiners. [All gas heating systems must be checked for proper operation and safety before the heating season by someone experienced in the areas of heating and air conditioning. Any unsatisfactory conditions must be corrected promptly.]

(K) The facility must have all gas heating systems checked for proper operation and safety before the heating season by a person licensed by the Texas Department of Licensing and Regulation to perform maintenance work on gas-fired equipment. Any unsatisfactory conditions must be corrected promptly.

(L) ~~[(H)]~~ Curtains or draperies in public spaces and individual rooms in which smoking is allowed must be flame retardant.

(M) ~~[(K)]~~ Portable fire extinguishers of appropriate type and placed in the appropriate location must be provided by the facility in accordance with NFPA 10 ~~[and maintained to comply with the provisions of NFPA 10. This includes such items as type of extinguishers (A, B, or C), location and spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent (with any necessary servicing), and hydrostatic testing as recommended by the manufacturer]~~.

(N) The facility must inspect and maintain portable fire extinguishers.

(i) Portable fire extinguishers must be visually inspected monthly by facility staff. Facility staff conducting the monthly visual inspection must assure portable fire extinguishers are protected from damage, kept on their mounting brackets or in cabinets at all times, and kept in proper condition and working order.

(ii) Portable fire extinguishers must be inspected and maintained at least once every 12 months in accordance with NFPA 10 by a person licensed by the State Fire Marshal's office, to include hydrostatic testing as recommended by the manufacturer.

(iii) A record of all fire extinguisher inspections and maintenance performed must be kept onsite by the facility.

(O) ~~[(L)]~~ ~~[Metal wastebaskets of substantial gauge or any UL- or FM-approved containers must be provided in all areas where smoking is permitted.]~~ Garbage, waste, or trash containers provided for kitchens, janitor closets, laundries, mechanical or boiler rooms, general storage, and similar places must be made of metal or any UL- or FM-approved material, having a close fitting cover. Disposable plastic liners may be used in these containers for sanitation.

## (2) General requirements.

(A) All exterior site conditions must be designed, constructed, and maintained in the interest of clients' safety. Newly constructed ramps must not exceed 1:12 slope. Ramps, walks, and steps must be of slip-resistive texture and be smooth and uniform, without irregularities. Guard rails, fences, and hand rails must be provided as required.

(B) All stairways must have substantial hand rails properly secured.

(C) Tubs or showers for client use must have non-slip bottoms or floor surfaces, either built in or applied to the surface.

(D) Elevators for client use must be in safe operating condition.

(E) An adequate supply of hot water must be provided. The hot water system connected to all client-use fixtures must deliver warm water no hotter than 120 degrees Fahrenheit at the fixture. Hot water for other sanitary usages must be provided at the temperatures required for the appliance or fixture served, or for the operation involved.

(F) There must be no occupancies or activities adversely affecting the safety of the clients in the buildings or on the premises of the facility.

(G) Licensure capacity will be calculated at 40 square feet per client. This space may not include the kitchen/food service area, rest rooms, bath areas, office, corridors, stairways, storage areas, and outdoor space. Facilities licensed before October 1, 2000, will be allowed to meet the requirements in effect before October 1, 2000, of 35/50 square feet for ambulatory and semi-ambulatory clients. If a facility licensed before October 1, 2000, chooses to increase its capacity, changes ownership, or relocates, the facility will be required to meet the current standards for usable space, outdoor area, and rooms for privacy.

(H) An office area must be provided in a central location to record and maintain files for each client.

(I) An area for rest, other than the treatment and/or exam room, must be provided with a sufficient number of reclining lounge chairs or beds to accommodate the needs of clients.

(J) The facility must provide a [A] separate room or rooms with beds and with walls from floor to ceiling ~~[must be provided]~~ for those clients who prefer privacy. Facilities licensed on or after May 1, 1999, must ensure that the room(s) with beds provide space for a minimum 5% of the licensed capacity. The usable space in the room(s) must provide not less than 80 square feet per bed for a one-bed room and not less than 60 square feet per bed for multiple-bed rooms. A bed-room shall be not less than eight feet in its smallest dimension, unless otherwise approved by DADS.

(K) The facility must have at least one room available as a treatment or examination room for use by the nursing staff or the client's physician. The client may not be treated or examined in an area other than the treatment room.

(L) The facility must have a safe, secure, and suitable outdoor recreation or relaxation area for clients. This area must be connected to, be a part of, be controlled by, and be directly accessible from the facility. This area must be enclosed by a wall or a fence or located in a courtyard and supervised by staff to prevent wandering and large enough to conduct outdoor activities. A chain-link fence must provide protection on top to prevent injury from wire points. This area must be suitably furnished. A minimum of 20% of the required outdoor space must be shaded. The required outdoor space for facilities licensed on or after May 1, 1999 is:

- (i) 400 square feet for facilities up to 59 clients;
- (ii) 600 square feet for facilities up to 99 clients; and
- (iii) 800 square feet for facilities with 100 or more clients.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2011.

TRD-201101132

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 438-3734



## SUBCHAPTER D. LICENSURE AND PROGRAM REQUIREMENTS

#### 40 TAC §98.64

##### STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Human Resource Code, Chapter 103, which provides DADS with the authority to license and regulate adult day care facilities.

The new rule implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

##### §98.64. Emergency Preparedness and Response.

###### (a) Definitions. In this section:

(1) "emergency situation" means an impending or actual situation that:

(A) interferes with normal activities of a facility or its clients;

(B) may:

(i) cause injury or death to a client or staff member of the facility; or

(ii) cause damage to facility property;

(C) requires the facility to respond immediately to mitigate or avoid the injury, death, damage or interference; and

(D) does not include a situation that arises from the medical condition of a client such as cardiac arrest, obstructed airway, cerebrovascular accident; and

(2) "plan" refers to a facility's emergency preparedness and response plan.

###### (b) Administration. A facility must:

(1) develop and implement a written plan as described in subsection (c) of this section;

(2) maintain a written copy of the plan that is accessible to all staff at all times;

(3) evaluate and revise the plan as necessary:

(A) within 30 days after an emergency situation;

(B) as soon as possible after the remodeling or construction of an addition to the facility; and

(C) at least annually; and

(4) revise the plan within 30 days after information included in the plan changes.

(c) Emergency Preparedness and Response Plan. A facility's plan must:

(1) include a risk assessment of all potential internal and external emergency situations relevant to the facility operations and geographical area, such as a fire, failure of heating and cooling systems, a power outage, an explosion, a hurricane, a tornado, a flood, extreme snow and ice for the area, a wildfire, terrorism, or a hazardous materials accident;

(2) include a description of the facility's client population;

(3) include a description of the services and assistance needed by the clients in an emergency situation;

(4) include a section for each core function of emergency management, as described in subsection (d) of this section, that is based on a facility's decision to either shelter-in-place or evacuate during an emergency; and

(5) include a fire safety plan that complies with subsection (f) of this section.

(d) Plan Requirements Regarding Eight Core Functions of Emergency Management.

(1) Direction and control. A facility's plan must contain a section for direction and control that:

(A) designates by name or title the emergency preparedness coordinator (EPC) who is the facility staff person with the authority to manage the facility's response to an emergency situation in accordance with the plan;

(B) designates by name or title the alternate EPC who is the facility staff person with the authority to act as the EPC if the EPC is unable to serve in that capacity;

(C) documents the name and contact information for the local emergency management coordinator (EMC) for the area where the facility is located, as identified by the office of the local mayor or county judge; and

(D) documents coordination with the local EMC as required by the local EMC's guidelines relating to emergency situations.

(2) Warning. A facility's plan must contain a section for warning that:

(A) describes how the EPC will be notified of an emergency situation;

(B) identifies who the EPC will notify of an emergency situation and when the notification will occur; and

(C) ensures monitoring of local news and weather reports.

(3) Communication. A facility's plan must contain a section for communication that:

(A) identifies the facility's primary mode of communication and alternate mode of communication to be used in the event of power failure or the loss of the facility's primary mode of communication in an emergency situation;

(B) includes procedures for maintaining a current list of telephone numbers for clients and responsible parties;

(C) includes procedures for maintaining a current list of telephone numbers for the facility's staff that also identifies the facility's EPC;

(D) identifies the location of the lists described in subparagraphs (B) and (C) of this paragraph where facility staff can obtain the list quickly;

(E) includes procedures to notify:

(i) facility staff about an emergency situation;

(ii) a receiving facility about an impending or actual evacuation of clients; and

(iii) clients, legally authorized representatives and other persons about an emergency situation;

(F) describes how the facility will provide, during an emergency situation, general information to the public, such as the change in the facility's location and hours, or that the facility is closed due to the emergency situation;

(G) includes procedures for the facility to maintain communication with:

(i) facility staff during an emergency situation;

(ii) a receiving facility if applicable; and

(iii) facility staff who will transport clients to a secure location during an evacuation in a facility vehicle;

(H) includes procedures for reporting to DADS an emergency situation that caused the death or serious injury of a resident as follows:

(i) by telephone, at 1-800-458-9858, within 24 hours after the death or serious injury; and

(ii) in writing, on the DADS form titled "DADS Provider Investigation Report," within 5 working days after the facility makes the telephone report required by clause (i) of this subparagraph.

(4) Sheltering-in-place. A facility's plan must contain a section that includes procedures to shelter clients in place during an emergency situation.

(5) Evacuation. A facility's plan must contain a section for evacuation that:

(A) requires posting building evacuation routes prominently throughout the facility, except in small, one-story buildings where all exits are obvious;

(B) includes procedures for evacuating clients to a pre-arranged location in an emergency situation, if applicable;

(C) includes a mutual aid agreement with a receiving facility which must specify the arrangements for receiving clients in the event of an evacuation;

(D) identifies primary and alternate evacuation destinations and routes, and includes a map that shows the destination and routes;

(E) includes procedures for:

(i) ensuring facility staff accompany evacuating clients;

(ii) ensuring that all persons present in the building have been evacuated;

(iii) accounting for clients and staff after they have been evacuated;

(iv) accounting for clients who are absent from the facility at the time of the evacuation;

(v) contacting the local EMC, if required by the local EMC guidelines, to find out if it is safe to return to the geographical area; and

(vi) determining if it is safe to re-enter and occupy the building after an evacuation;

(F) includes procedures for notifying the local EMC regarding an evacuation of the facility, if required by the local EMC guidelines;

(G) includes procedures for notifying DADS by telephone, at 1-800-458-9858, within 24 hours after an evacuation that clients have been evacuated;

(H) includes procedures for notifying DADS Regulatory Services regional office for the area in which the facility is located, by telephone, as soon as safely possible after a decision to evacuate is made; and

(I) includes procedures for notifying DADS regional office for the area in which the facility is located, by telephone, that clients have returned to the facility after an evacuation, within 48 hours after their return.

(6) Transportation. A facility's plan must contain a section for transportation that:

(A) provides for a sufficient number of vehicles that are safe and suitable for any special needs of the clients or requires that the facility maintain a contract for transporting clients during an evacuation;

(B) identifies facility staff authorized to drive a vehicle during an evacuation;

(C) establishes alternate transportation arrangements if the vehicles or contracted transportation described in subparagraph (A) of this paragraph are not available;

(D) includes procedures for safely transporting oxygen tanks currently being used by clients and any extra oxygen tanks that may be needed during an evacuation; and

(E) includes procedures that will ensure:

(i) safe transport of records, food, water, equipment, and supplies needed during an evacuation; and

(ii) that the records, food, water, equipment, and supplies, described in clause (i) of this subparagraph, arrive at the receiving facility at the same time as the clients.

(7) Health and Medical Needs. A facility's plan must contain a section for client health and special needs that:

(A) identifies all of the facility's special needs clients including clients with conditions requiring assistance during an evacuation; and

(B) ensures the needs of those clients are met during an emergency.

(8) Resource Management. A facility's plan must contain a section for resource management that:

(A) includes procedures for accessing medications, records, food, water, equipment and supplies needed during an emergency;

(B) identifies facility staff who are assigned to locate and ensure the transportation of items described in subparagraph (A) of this paragraph during an emergency situation; and

(C) includes procedures to ensure medications are secure and stored at the proper temperatures during an emergency situation.

(e) Training. A facility must:

(1) train all staff on their responsibilities under the plan when hired in accordance with §98.62(e) of this chapter (relating to Program Requirements);

(2) retrain staff at least annually on the staff member's responsibilities under the plan and when the staff member's responsibilities under the plan change; and

(3) conduct unannounced drills with facility staff for severe weather and other emergency situations identified by the facility as likely to occur, based on the results of the risk assessment required by subsection (c)(1) of this section.

(f) Fire Safety Plan. A facility's fire safety plan must:

(1) include the provisions described in the Operating Features section of the NFPA 101 Life Safety Code, 2000 Edition, Chapter 16 (for new day-care occupancies) and Chapter 17 (for existing day-care occupancies) concerning:

(A) use of alarms;

(B) transmission of alarm to fire department;

(C) response to alarms;

(D) isolation of fire;

(E) evacuation of immediate area;

(F) evacuation of smoke compartment;

(G) preparation of floors and building for evacuation;

and

(H) fire extinguishment;

(2) include procedures to contact DADS by telephone, at 1-800-458-9858, within 24-hours after a fire in accordance with §98.42 of this chapter (relating to Safety); and

(3) include procedures to submit to DADS, within 15 days after the fire, the form entitled "Fire Report for Long Term Care Facilities;"

(4) include in the fire safety plan the provisions described in the Operating Features section of the NFPA 101 Life Safety Code, 2000 Edition, Chapter 16 (for new day-care occupancies) and Chapter 17 (for existing day-care occupancies) concerning drills and inspections, except as superseded by this section; and

(5) establish procedures to:

(A) perform a monthly fire drill with all occupants of the building at expected and unexpected times and under varying conditions;

(B) relocate, during the monthly fire drill, all occupants of the building to a predetermined location where participants must remain until a recall or dismissal signal is given;

(C) complete the DADS Fire Drill Report Form for each required fire drill;

(D) conduct a monthly fire prevention inspection performed by a trained and senior member of the facility and prepare a report of the inspection results;

(E) maintain copies of the fire prevention inspection report, described in subparagraph (D) of this paragraph, that were prepared by the facility within the last 12 months; and

(F) post a copy of the most recent fire prevention inspection report, described in subparagraph (D) of this paragraph, in a conspicuous place in the facility.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2011.

TRD-201101133

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 438-3734



## CHAPTER 100. MISCELLANEOUS

### SUBCHAPTER A. OPERATION OF THE TEXAS DEPARTMENT ON AGING

#### 40 TAC §100.22

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §100.22, concerning public hearing procedures for the Texas Department on Aging, in Chapter 100, Miscellaneous.

#### BACKGROUND AND PURPOSE

Section 100.22, which describes procedures by which DADS conducts public hearings on the Texas State Plan on Aging, is proposed for repeal to allow DADS the flexibility to develop procedures based on communication technology and other factors at the time a hearing is held. The procedures will be publicized by a means other than by rule.

#### SECTION-BY-SECTION SUMMARY

The proposed repeal of §100.22 removes the rule that describes procedures by which DADS conducts public hearings on the Texas State Plan on Aging.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years after the repeal, there are no foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses, because the rules apply only to an area agency on aging (AAA). AAAs are public or nonprofit agencies or organizations, not small businesses or micro-businesses, which are legal entities formed for the purpose of making a profit.

#### PUBLIC BENEFIT AND COSTS

Gary Jessee, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the section is having more efficient procedures regarding public hearings held by DADS on the Texas State Plan on Aging.

Mr. Jessee anticipates that there will not be an economic cost to persons who are affected by the repeal. The repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Toni Packard at (512) 438-4290 in DADS Access and Intake Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-9R022, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, TX 78714-9030 or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R022" in the subject line.

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

*§100.22. Public Hearing Procedures for the Texas Department on Aging.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2011.

TRD-201101127

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 1, 2011

For further information, please call: (512) 438-3734

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# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 22. EXAMINING BOARDS

### PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

#### CHAPTER 321. DEFINITIONS

##### 22 TAC §321.1

The Texas Board of Physical Therapy Examiners withdraws the proposed amendment to §321.1 which appeared in the December 10, 2010, issue of the *Texas Register* (35 TexReg 10803).

Filed with the Office of the Secretary of State on March 15, 2011.

TRD-201101053

John Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: March 15, 2011

For further information, please call: (512) 305-6900

#### CHAPTER 322. PRACTICE

##### 22 TAC §322.3

The Texas Board of Physical Therapy Examiners withdraws the proposed amendment to §322.3 which appeared in the December 10, 2010, issue of the *Texas Register* (35 TexReg 10808).

Filed with the Office of the Secretary of State on March 15, 2011.

TRD-201101056

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: March 15, 2011

For further information, please call: (512) 305-6900

# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY SUBCHAPTER C. UTILIZATION REVIEW

##### 1 TAC §371.216

The Texas Health and Human Services Commission (HHSC) adopts new §371.216, concerning waiver of extrapolation, without changes to the proposed text as published in the January 21, 2011, issue of the *Texas Register* (36 TexReg 191) and, therefore, the section will not be republished.

##### Background and Justification

The new rule is adopted to clarify procedural questions rising from the conversion from the Texas Index for Level of Effort (TILE) classification system and provider payment methodology to the federal Resource Utilization Group (RUG) classification system and provider payment methodology.

The HHSC Office of Inspector General (OIG) reviews level-of-care assessments of a nursing facility's Medicaid residents to safeguard against fraud, waste, and abuse. The HHSC-OIG Utilization Review program monitors the assessment claims to ensure that payments for Medicaid services are appropriate. These utilization reviews identify correct and incorrect payments. HHSC recovers overpayments and reimburses underpayments to the nursing facility.

Before 2008, the Texas Department of Aging and Disability Services (DADS) used the TILE classification system and provider payment methodology to make Medicaid reimbursements to nursing facilities, and HHSC-OIG utilization reviews were based on the TILE system. In September 2008, DADS began using the Centers for Medicare and Medicaid Services' RUG classification system and provider payment methodology. Therefore, HHSC promulgated new rules to govern its utilization review under the RUG system.

To give time for all parties to become familiar with the RUG system, HHSC adopted a rule (1 TAC §371.214) that provides a phase-in grace period for extrapolating overpayments identified during an HHSC-OIG utilization review. The phase-in grace period expired on August 31, 2010. Due to unforeseen delays in developing the automation to support RUG-based utilization reviews, HHSC-OIG did not conduct any RUG-based reviews by the August 31, 2010, expiration date, thus depriving providers of

any grace periods. No exception for extrapolating the overpayment exists in HHSC's current rules. The new rule is adopted to allow for such an exception.

New §371.216 authorizes the inspector general to waive the extrapolation of overpayments identified during utilization reviews of nursing facilities under the RUG system. The provider must request the waiver. The inspector general may waive the extrapolation of overpayment within his discretion upon a showing of good cause. The rule is designed to: (1) alleviate some of the concerns of the provider community about forfeiting the phased-in grace period designed to allow all parties to gain familiarity with the RUG reviews; and (2) provide an ongoing remedy for waiving extrapolation if the results would be so burdensome as to threaten the financial stability of the provider.

##### Comments

HHSC received written comments from the Texas Health Care Association. Summarized comments and the responses follow.

Comment: The Texas Health Care Association supports this rule and proposes an additional modification to §371.214 of this subchapter (relating to Resource Utilization Group Classification System) that would limit extrapolation to reviews consisting of Minimum Data Set assessments (MDSs) with Assessment Reference Dates (ARDs) that occur after September 1, 2009, because administrative obstacles delayed enforcement of the RUG classification reviews until after the phase-in periods had expired.

Response: HHSC-OIG acknowledges this concern, but the comment is beyond the scope of the proposal.

Comment: The Texas Health Care Association supports this rule and proposes an additional modification to §371.214 that would apply extrapolation to a provider only after it has received at least one RUG utilization review.

Response: HHSC-OIG acknowledges this concern, but the comment is beyond the scope of the proposal.

Comment: The Texas Health Care Association supports this rule and proposes an additional modification to §371.214 that would modify the phase-in period to coincide with the actual start of the RUG utilization reviews.

Response: HHSC-OIG acknowledges this concern, but the comment is beyond the scope of the proposal.

Comment: The Texas Health Care Association supports this rule and proposes an additional modification to §371.214 that would limit the population in a look-back period to MDSs with ARDs after the prior OIG error rate exit date.

Response: HHSC-OIG acknowledges this concern, but the comment is beyond the scope of the proposal.

Comment: The Texas Health Care Association supports this rule and proposes an additional modification to §371.214 that would require HHSC-OIG to provide to facilities the method and data used to calculate both the extrapolation amount and the recoupments in the sample.

Response: HHSC-OIG acknowledges this concern, but the comment is beyond the scope of the proposal. Moreover, HHSC-OIG is working with the Texas Health Care Association to issue a written description of the extrapolation methodology for release to the facilities.

Comment: The Texas Health Care Association supports this rule and proposes an additional modification to §371.216 that would allow providers that are reviewed prior to the effective date of this rule to request a waiver of extrapolation prior to adoption of this rule.

Response: HHSC-OIG acknowledges this concern, but is unaware of any way to draft rule language that would circumvent the Administrative Procedure Act by creating a retroactive effective date.

Comment: The Texas Health Care Association supports this rule and proposes an additional modification to §371.214 that would limit extrapolation to only those reviews resulting in a 5% minimum error rate.

Response: HHSC-OIG acknowledges this concern, but the comment is beyond the scope of the proposal.

#### Legal Authority

The new section is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient operation of the Medicaid program; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 21, 2011.

TRD-201101112

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: April 10, 2011

Proposal publication date: January 21, 2011

For further information, please call: (512) 424-6900



## SUBCHAPTER G. LEGAL ACTION RELATING TO PROVIDERS OF MEDICAL ASSISTANCE

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §371.1647, concerning notice of sanction, and new §371.1709, concerning recoupment of overpayments pursuant to audit, with changes to the proposed text as

published in the January 14, 2011, issue of the *Texas Register* (36 TexReg 117) and, therefore, the sections will be republished.

#### Background and Justification

The amendment to §371.1647 is adopted to address the notice requirement for an audit that has been performed in accordance with new §371.1709.

New §371.1709 is adopted to implement provisions of the federal Deficit Reduction Act of 2005, specifically section 1936 of the Social Security Act, which created the Medicaid Integrity Program. Section 1936 requires the Centers for Medicare & Medicaid Services (CMS) to contract with eligible entities to review and audit Medicaid claims for fraud, waste, and abuse. According to the most recent CMS Comprehensive Medicaid Integrity Plan, the CMS Medicaid Integrity Group (MIG) expects to continue awarding auditing contracts through federal fiscal year 2013. Although the MIG auditors will identify overpayments, CMS looks to the individual states to recoup those overpayments.

Further, the United States Department of Health and Human Services Office of Inspector General's (OIG's) Office of Audit Services has announced that it is conducting a new enforcement initiative against Medicaid providers. The federal OIG's Office of Audit Services will identify overpayments but will require the states to recoup those overpayments. In March 2010, Congress enacted the Patient Protection and Affordable Care Act (PPACA), which expands recovery audit contractors' audit authority to Medicaid claims. It is contemplated that the HHSC's Office of Inspector General (HHSC-OIG) will need a procedural rule to support enforcement of these additional enforcement initiatives.

The existing rules that govern recovery of overpayments contemplate the enforcement of field investigations originated by HHSC-OIG and do not contemplate the procedural differences between HHSC-OIG field investigations and federal audits. The existing rules are insufficient in some respects to comply with government auditing standards and too burdensome in others. The adopted rule establishes a procedural process for enforcing audit findings that comports with accepted auditing standard requirements and streamlines the enforcement process. The adopted rule also specifies the government auditing standards that must be employed by federal and contract auditors, thus ensuring that providers will not be subjected to improper audits or reviews.

#### Comments

HHSC received written comments from the Texas Association for Home Care & Hospice, the Texas Federation of Drug Stores, the National Association of Chain Drug Stores, and a law firm representing unidentified hospitals. A summary of the comments and HHSC's responses follow.

Comment: The Texas Association for Home Care & Hospice requests that HHSC consider renaming the collection of overpayments to something other than "sanction" if they are not the result of fraud, waste, or abuse. The term "sanction" could "affect other portions of a health care provider's business and their ability to maintain a license."

Response: HHSC was unaware of any adverse effects that could arise from its terminology, and sought clarification. To date, the Association has not responded. In the absence of clarification, HHSC generally disagrees with the comment. The recoupment of overpayments is classified as a sanction in §371.1643 of this chapter (relating to Use of Sanctions), which is not at issue in

this rule package. Section 371.1703 (relating to Recovery of Payments) clarifies that the sanction of recoupment may arise as a result of error, misunderstanding, or a program violation, which should alleviate this concern. Additionally, HHSC Appeals Division rules categorize the recoupment of overpayments as a sanction. See §357.588(a)(3) of this title (relating to Administrative Actions and Sanctions). Because the requested modification would require a systemic modification of its other rules, HHSC declines to recharacterize its recoupment rules.

Comment: The Texas Association for Home Care & Hospice suggests that exit conferences should be required in §371.1709(c)(1)(C) and (D), rather than be optional.

Response: HHSC acknowledges this concern and agrees that conducting an exit conference is a best practice, but it disagrees with the comment. Because many of the audits are conducted under the authority and direction of federal agencies, HHSC is unable to require the auditor to conduct an exit conference.

Comment: The Texas Association for Home Care & Hospice suggests that §371.1709(c)(1)(D) be modified to specify that the provider has ten calendar days to produce additional documentation for consideration.

Response: HHSC agrees with the comment and modified §371.1709(c)(1)(D) accordingly.

Comment: The Texas Association for Home Care & Hospice suggests that §371.1709(f) and (g) allow a provider to file a partial appeal and also seek a repayment plan for the uncontested findings.

Response: HHSC agrees with the comment and has amended subsections (f) and (g) to allow a provider to appeal some issues while seeking a payment plan on the uncontested findings.

Comment: The Texas Association for Home Care & Hospice suggests that proposed §371.1709(f), (g), and (h) all allow 15 business days in which to file a notice of appeal.

Response: HHSC declines to make the requested change. The 15 calendar day time frame was implemented to comport with the HHSC Appeals Division rules, which require an appellant to file a notice of appeal within 15 calendar days. See §357.484(b) of this title (relating to Request for a Hearing) and §357.486 of this title (relating to Computation of Time).

Comment: A law firm representing hospital clients recommends that §371.1709 be clarified to state that HHSC will not recoup payments until the conclusion of the appeals process.

Response: HHSC agrees with the comment and has modified subsection (e) to provide that recoupment of overpayments at issue on appeal will not be initiated until the appeal has been finally determined. HHSC cautions, however, that it is not authorized to determine what constitutes identification of an overpayment for federal reporting purposes, nor is it authorized to enact rules that may conflict with the PPACA or Code of Federal Regulations provisions governing the identification and repayment of overpayments. Providers are advised to seek independent legal counsel in determining whether reliance upon this modification might create liability under PPACA's 60-day repayment requirement.

Comment: A law firm representing hospital clients suggests that providers be allowed to designate a specific address and contact person for all audit notices in order to avoid unnecessary delays and denials.

Response: HHSC agrees with the comment and has modified §371.1709 by adding a new subsection (j) to allow providers to designate a specific address and individual point of contact.

Comment: A law firm representing hospital clients complains that the 15 calendar day appellate deadline is too short to allow for meaningful analysis. Counsel recommends that the deadline be changed to 120 days.

Response: HHSC disagrees with the comment. The 15 calendar day time frame was implemented to comport with the HHSC Appeals Division rules, which require an appellant to file a notice of appeal within 15 calendar days. See §357.484(b) and §357.486 of this title. Moreover, before issuance of the final report, the provider will have received a list of potential exceptions during an exit conference and been given ten days to respond, later received a draft audit report, been allowed 30 days to review the draft report and submit a management response, received any revised draft audit reports, and been allowed an additional 30 calendar days to respond to any new findings in a revised draft audit report. In response to this comment, HHSC modified subsection (c)(2)(C) to specify that the provider has an additional 30 calendar days to submit a management response to any revised draft audit reports that modify the basis for assessing an overpayment or increasing the overpayment amount, or to informally appeal any revised findings with the auditor. The final audit report will not be completed or issued until after these events have transpired.

Comment: A law firm representing hospital clients recommends that the rule establish limits on the number of records an auditor may request.

Response: HHSC acknowledges this concern and agrees that the audits should not create an undue administrative burden, but the comment is beyond the scope of the proposal. Because the audits are conducted under the authority and direction of federal agencies, HHSC is unable to mandate any limits upon the scope of an audit.

Comment: A law firm representing hospital clients recommends that the rule elaborate on the appellate process to clarify which rules and procedures apply.

Response: HHSC agrees with the comment and has modified the rule to include a new subsection (h), which specifies that audit appeals will be heard by the HHSC Appeals Division pursuant to 1 TAC Chapter 357, Subchapter I.

Comment: A law firm representing hospital clients suggests that the rule incorporate an administrative tier of review.

Response: HHSC disagrees with the comment to the extent it suggests that administrative review is unavailable. Section 371.1709(c)(2)(B) and (C) provide for administrative review after the draft audit report is issued, and again if the auditor issues a revised draft audit report that modifies the basis or rationale for determining that an overpayment exists or that increases the overpayment amount.

Comment: A law firm representing hospital clients suggests that the rule include limitations on liability, based upon whether the provider was considered to be at fault.

Response: HHSC acknowledges this concern and notes that it notifies the auditor if any proposed findings may be allowable under Medicaid policy prior to the issuance of the final report, but this comment is beyond the scope of the proposal. With respect to the final audit report, the audits are conducted under the au-

thority and direction of federal agencies and HHSC is unable to mandate any limits on potential liability.

Comment: The Texas Federation of Drug Stores and the National Association of Chain Drug Stores recommend that the rule be modified to require 14 to 30 days' advance notice before the date of the site visit.

Response: HHSC acknowledges the comment, but disagrees. Many audits are conducted under the authority and direction of federal agencies, so HHSC is unable to mandate any advance notice requirements upon the federal auditors.

Comment: The Texas Federation of Drug Stores and the National Association of Chain Drug Stores request that the rule be modified to allow a provider up to 30 days after the exit conference to produce supplemental documentation.

Response: HHSC disagrees with the comment. After the ten days have elapsed, the provider is also afforded an additional 30 calendar days to respond to any findings in the draft audit report, and another 30 days to respond to any new findings in a revised draft audit report. Additionally, the provider has an opportunity to informally appeal any draft audit findings or revised draft findings with the auditor. The final audit report will not be issued until after these events have transpired.

Comment: The Texas Federation of Drug Stores and the National Association of Chain Drug Stores comment that it is unclear whether the payment plan provisions would allow a provider to agree that the overpayments to be recouped from future Medicaid payments.

Response: HHSC acknowledges this concern but declines to modify the rule language. Because the rule contemplates individual negotiations in each case, the provider is always free to request that the overpayment be withheld from future Medicaid payments. HHSC-OIG, within its discretion, will consider all reasonable payment plan requests.

Comment: The Texas Federation of Drug Stores and the National Association of Chain Drug Stores comment that the rule does not specify the methodology to be used by the auditor in calculating overpayment amounts. They express concern that statistical sampling and extrapolation should not be used.

Response: HHSC acknowledges the comment, but it is beyond the scope of this proposal. Many audits are conducted under the authority and direction of federal agencies, so HHSC is unable to mandate any limits upon the auditor's methodology beyond the requirement that the audit be performed in accordance with generally accepted governmental auditing standards.

HHSC is also making a technical change in the adopted text of §371.1647, because the proposed text contained a publication error. The "relating to" statement in §371.1647(e)(3) included an extraneous phrase. The proposal should have read: "(relating to Immediate Sanctions Due to Health and/or Safety)." Instead, it read: "(relating to Restricted Reimbursement and Immediate Sanctions Due to Health and/or Safety)." 36 TexReg 119, (Jan. 14, 2011). The adoption corrects the publication error.

## **DIVISION 4. ADMINISTRATIVE SANCTIONS**

### **1 TAC §371.1647**

#### **Legal Authority**

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of

HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient operation of the Medicaid program; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

#### *§371.1647. Notice of Sanction.*

(a) The Office of the Inspector General (OIG) provides written notice of a potential sanction(s) by certified mail with return receipt or by facsimile transmission with confirmation page. Except as provided by subsection (f) of this section, a recoupment requires both an initial written notice of potential sanction and a subsequent written notice of final sanction; therefore, any additional sanctions of any type in the same notice letter with a recoupment will require both notice letters. Additional provisions regarding notice of an exclusion are provided in §371.1649 of this subchapter (relating to Exceptions to Prior Notice of Exclusion, Cancellation of Contract or Provider Agreement, and Restricted Reimbursement). If there is no specific requirement in Subchapter G for a written notice of a potential sanction for an individual specific situation, the only sanction notice letter required is the notice of final sanction.

(b) Potential sanction. The written notice of potential sanction includes:

- (1) a description of the potential sanction;
- (2) the basis of the potential sanction;
- (3) the effect of the potential sanction;
- (4) its duration (duration could be indefinite or until a certain event occurred), if appropriate; and
- (5) if the sanction is an exclusion, a description of the method the provider uses to request reinstatement, unless the exclusion is permanent.

(c) In the case of a recoupment, a statement of the provider's or person's right to request a formal appeal hearing of the potential sanction is not provided in the initial notice letter, since this is not a final sanction. A statement of the provider's or person's right to request a formal appeal hearing of the final sanction will be subsequently provided with the final written notice of OIG's final overpayment determination.

(d) Final sanction. The written notice of final sanction includes:

- (1) a description of the final sanction;
- (2) the basis of the final sanction;
- (3) the effect of the final sanction;
- (4) its duration (duration could be indefinite or until a certain event occurred), if appropriate;
- (5) a statement of the provider's or person's right to request a formal appeal hearing of the sanction; and
- (6) if the sanction is an exclusion, a description of the method the provider or person uses to request reinstatement, unless the exclusion is permanent.

(e) The sanctions will take effect in the following manner:

(1) Recoupment--The provider or person will receive a notice of a potential sanction to impose recoupment. The provider or

person may request an informal review, to informally discuss the issues and allow the provider or person an opportunity to provide information they deem appropriate. Subsequently, OIG will make a final determination regarding the amount to be recouped. Upon that determination, OIG will send final determination and notice of recoupment to the provider or person.

(2) Payment hold--A payment hold on payments of future claims submitted for reimbursement will be imposed, without prior notice, as specified in §371.1703(b) of this subchapter (relating to Recovery of Overpayments). The provider will be notified of the payment hold not later than the fifth (5th) working day after the date the hold is imposed. The payment hold will remain in effect until all issues regarding the provider's billing practices are finally resolved, including all litigation and judicial processes.

(3) Restricted reimbursement--The provider will receive final notice of intent to impose restricted reimbursement unless the provider meets one of the exception criteria enumerated in §371.1649 of this subchapter and §371.1651 of this subchapter (relating to Immediate Sanctions Due to Health and/or Safety). The provider may request an informal review and/or an administrative appeal hearing as described in paragraph (1) of this subsection.

(4) Exclusion--The provider or person will receive a notice of potential imposition of exclusion unless the provider meets one of the exception criteria enumerated in §371.1649 and §371.1651 of this subchapter. The provider or person may request an informal review, to informally discuss the issues and allow the provider or person an opportunity to provide information they deem appropriate. This process will occur before OIG submits its final notice of exclusion to the provider or person. At that time, the provider or person may request an administrative appeal hearing as described in §371.1669 of this subchapter (relating to Notice of Appeal).

(5) Cancellation of contract or provider agreement--The provider or person will receive a notice of potential cancellation of contract or provider agreement unless the provider meets one of the exception criteria enumerated in §371.1649 and §371.1651 of this subchapter. The provider may request an informal review as described in paragraph (1) of this subsection. This process will occur before OIG submits its final notice of cancellation of contract or provider agreement to the provider or person. If a provider or person is excluded who also has a contract or provider agreement, prior notice of the cancellation of contract or provider agreement is not a requirement, since the scope and effect of the exclusion, as specified in §371.1673 of this subchapter (relating to Scope and Effect of Exclusion), does not allow that person to participate in Titles XIX, V, and XX programs. The contract or provider agreement in that instance would be cancelled effective the effective date of the exclusion.

(f) In the case of an audit that has been performed in accordance with §371.1709 of this subchapter (relating to Recoupment of Overpayments Pursuant to Audit), recoupment of questioned costs or other audit findings by OIG does not require two notice letters. The OIG will provide written notice of the final sanction along with a copy of the final audit report.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 21, 2011.  
TRD-201101113

Steve Aragon  
Chief Counsel  
Texas Health and Human Services Commission  
Effective date: April 10, 2011  
Proposal publication date: January 14, 2011  
For further information, please call: (512) 424-6900



## DIVISION 5. RECOVERY OF OVERPAYMENTS

### 1 TAC §371.1709

#### Legal Authority

The new section is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient operation of the Medicaid program; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

*§371.1709. Recoupment of Overpayments Pursuant to Audit.*

(a) The Office of the Inspector General (OIG) may recoup overpayments if the overpayment was identified in an audit that found that claims or cost reports submitted in error resulted in money paid in excess of what the provider is entitled to receive under an HHS program, contract, or grant.

(b) In this section:

(1) "Audit" means a financial audit, attestation engagement, performance audit, or compliance audit, conducted by or on behalf of the state or federal government. An audit may or may not include site visits to the provider's place of business.

(2) "Auditor" means the qualified person, persons, or entity performing the audit on behalf of the state or federal government.

(3) "Field work" may include site visits to the provider as well as consultation with expert reviewers, HHS staff subject matter experts, and other state or federal agencies.

(4) "Qualified" means possessing integrity, objectivity, independence from personal and external impairments, professional judgment, and competence as defined in the Generally Accepted Governmental Auditing Standards (GAGAS) issued by the Comptroller General of the United States.

(c) Audits conducted or enforced by OIG will be conducted and reported in accordance with GAGAS or other appropriate standards recognized by the United States Government Accountability Office.

(1) Audit procedures. The auditor must:

(A) limit the period covered by an audit to five years;

(B) notify the provider, and the provider's corporate headquarters if the provider is incorporated, of the impending audit not later than the seventh day before the date the site visit, if any, begins, except when an element of surprise is critical to the audit objective, such as surprise audits, cash counts, or fraud-related procedures;

(C) if an exit conference is conducted after the site visit, allow the provider to:

- (i) respond to questions by the auditor; and
- (ii) comment on the initial findings of the auditor;

and

(D) permit the provider to produce, for consideration, documentation to address any exception found during an audit not later than the 10th calendar day after the date the exit conference, if any, is completed, or by a later date as specified by the auditor.

(2) Audit report.

(A) After the field work is completed, the auditor must deliver a draft audit report to the provider by certified mail with return receipt, by facsimile transmission with confirmation page, or by courier-receipted delivery (or any other verifiable means).

(B) The auditor must permit the provider to submit, for consideration, a written management response to the draft audit report or to informally appeal the findings in the draft audit report. The provider must submit the written management response or request for an informal appeal by a date determined by the auditor, but not later than the 30th day after the draft audit report is delivered to the provider. The informal appeal will consist of a desk review by the auditing division or entity.

(C) The auditor may elect whether to issue a revised draft audit report or to issue a final report. If deemed appropriate by OIG, the auditor will revise the draft audit report as needed to incorporate the management responses and reconsideration of any initial findings. The auditor, in its discretion, may consider additional management or HHS agency staff responses to the revised draft audit report and make additional revisions. If additional revisions are made that modify the basis or rationale for determining that an overpayment exists or that increase the overpayment amount, the provider will be permitted to submit for consideration a written management response to the revisions or to informally appeal the revised findings with the auditor not later than the 30th calendar day after the revised draft audit report is delivered to the provider.

(D) The auditor or the OIG must deliver the final audit report to the provider by certified mail with return receipt, by facsimile transmission with confirmation page, or by courier-receipted delivery (or any other verifiable means). The report must include:

- (i) a statement of the auditor's compliance with GAGAS;
- (ii) the management response, which may be summarized;
- (iii) the final determination of overpayment amount;
- (iv) reconsideration results and the revisions of any initial findings; and
- (v) a recitation of the provider's rights and obligations as set forth in subsections (d) - (i) of this section.

(d) The provider must refund the overpayment within 60 calendar days after receipt of the final audit report, unless the provider:

- (1) timely requests and executes a final payment plan agreement that has been approved by OIG; or
- (2) timely requests an administrative hearing appeal.

(e) For purposes of refunding the federal share of any questioned costs, the final audit report constitutes the State's written notice of the identified overpayment amount. The date of the written notice of overpayment accompanying the final audit report constitutes the date

of discovery. If the provider appeals the final audit report, the state will issue a written notice of the identified overpayment amount at the conclusion of the appeal, and the date of that written notice will constitute the date of discovery. Recoupment of overpayments at issue on appeal will not be initiated by OIG until the appeal has been finally determined.

(f) To request a final payment plan agreement, the provider must file a written request for a final payment plan agreement with OIG within 15 calendar days after receipt of the final audit report. The request must be signed by the provider or its attorney and contain a statement that the provider agrees not to dispute the findings of the final audit report for purposes of the overpayment recoupment sanction at issue and waives its right to an appeal of any findings for which a payment plan agreement is sought. The request for a final payment plan agreement is not binding upon OIG. A resolution is not final until the provider and OIG execute a written final payment plan agreement. The OIG retains discretion to determine when payment plan negotiations have been exhausted. A request for a final payment plan agreement does not abate the imposition of a final debt in accordance with subsection (i) of this section. Provided, however, that the OIG may agree to toll the repayment obligation deadline pending negotiations of payment plan terms. The OIG will send written notice to the provider of any decision to toll the repayment obligations or to discontinue further payment plan negotiations.

(g) To request an appeal of the final audit report, the provider must file a written request for an appeal with OIG within 15 calendar days after receipt of the final audit report. The request must:

- (1) be signed by the provider or its attorney;
- (2) contain a statement as to the specific issues, findings, or legal authority in the final audit report being challenged, and the basis for the provider's contention that the specific issues or findings and conclusion are incorrect; and
- (3) with respect to any audit findings that are not being challenged on appeal, indicate whether the provider intends to remit payment within 60 calendar days or whether the provider seeks a payment plan in accordance with subsection (f) of this section.

(h) Upon timely receipt of a written request for appeal, OIG will notify the HHSC Appeals Division of the provider's hearing request. The appeal will then proceed pursuant to Chapter 357, Subchapter I of this title (relating to Hearings Under the Administrative Procedure Act).

(i) The final audit report becomes final and unappealable if no response is filed with the OIG within 15 calendar days after the provider's receipt of the final audit report. The effect of the audit finding is to create a final debt in favor of the State of Texas. If a final payment plan agreement is not executed by all parties or full restitution is not received within 60 calendar days after receipt by the provider of the final audit report or final disposition of an administrative appeal, one or more vendor holds may be placed on the provider's payment claims and account. Provided, however, that the OIG may agree to toll the imposition of any vendor holds pending negotiations of payment plan terms. The OIG will send written notice to the provider of any decision to toll the imposition of any vendor holds.

(j) A provider may designate a specific address and individual point of contact for receiving all correspondence related to the audit by sending the designee's contact information to the auditor and to the OIG Sanctions unit. The OIG will begin sending all notices and correspondence to the designated point of contact within 30 calendar days after receiving the designation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 21, 2011.

TRD-201101114

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: April 10, 2011

Proposal publication date: January 14, 2011

For further information, please call: (512) 424-6900



## **TITLE 22. EXAMINING BOARDS**

### **PART 9. TEXAS MEDICAL BOARD**

#### **CHAPTER 185. PHYSICIAN ASSISTANTS**

##### **22 TAC §185.3**

The Texas Medical Board (Board) adopts amendments to §185.3, concerning Meetings and Committees, without changes to the proposed text as published in the November 5, 2010, issue of the *Texas Register* (35 TexReg 9811) and will not be republished.

The amendment provides that committee minutes are to be approved by the full board rather than by committee which is required under Robert's Rules of Order.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §203.101, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of physician assistants in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 18, 2011.

TRD-201101110

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: April 7, 2011

Proposal publication date: November 5, 2010

For further information, please call: (512) 305-7016



## **PART 11. TEXAS BOARD OF NURSING**

### **CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE**

##### **22 TAC §217.4**

Introduction. The Texas Board of Nursing (Board) adopts amendments to §217.4 (relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nurs-

ing Education Programs Outside of United States' Jurisdiction) without changes to the proposed text published in the February 11, 2011, issue of the *Texas Register* (36 TexReg 704) and will not be republished.

Reasoned Justification. The amendments are adopted under the Occupations Code §§301.251, 301.252, and 301.151 and are necessary to specify an exception to the Board's licensure requirements for qualified international nurse applicants.

Existing §217.4 requires international nurse applicants for initial licensure by examination to achieve an approved score on an English proficiency test acceptable to the Board. This requirement is designed to ensure that non-native English speaking international nurse applicants possess the requisite reading, writing, listening, and speaking skills necessary to competently and safely practice nursing in this state. Although it has been the Board's long-standing practice to routinely exempt international nurse applicants from this requirement if the applicant could show that he/she completed a nursing program of study that was substantially conducted in the English language, the existing rule does not reflect this exception. The Board considered the proposed amendments to §217.4 at its January 2011, meeting, and voted to formalize its historical practice in rule.

The Board is charged with protecting the health, safety, and welfare of the public. One way in which the Board fulfills this obligation is by regulating the licensure of nursing applicants. The Board has established various licensing requirements that a nursing applicant must meet in order to take the National Council Licensing Examination (NCLEX) and subsequently become licensed as a nurse in this state. These requirements include the completion of a licensure application, nursing program of study, and background check and the resolution of any outstanding eligibility issues. In addition to these requirements, international nurse applicants must also achieve an approved score on an English proficiency test. An English proficiency test is designed to evaluate whether an individual possesses the skills necessary to read, write, and communicate effectively in the English language. Such skills are instrumental to a nursing applicant's ability to achieve a passing score on the NCLEX, which is only available in English, and upon licensure, to provide effective nursing care to patients and the public. A licensed nurse must be able to listen and respond to instructions in English; to understand policies, procedures, and medication and treatment orders that are written in English, and to write and speak fluently in the English language so that others, such as health care providers and patients, can comfortably communicate with the nurse. These concerns are lessened, however, when an international nurse applicant's nursing program of study has been substantially conducted in the English language. In such situations, an international nurse applicants' books may be printed in English; an applicant may attend lectures that are conducted in English; an applicant may be required to submit written coursework in English; an applicant's examinations may be conducted in English; and an applicant's clinical experiences may require verbal and written communications in English. In these cases, an individual's proficiency in the English language has been effectively evaluated throughout the duration of the nursing program of study. Because there is no need to re-test the individual's proficiency in the English language as part of the licensure process, the Board has historically exempted qualified international nurse applicants from this requirement. The adopted amendments are designed to formalize this exception and to eliminate an unnecessary barrier to licensure for qualified international nurse applicants.



How the Sections will Function. Adopted §217.4(a)(1)(C) requires a licensed vocational nurse applicant to achieve an approved score on an English proficiency test acceptable to the Board, unless a substantial portion of the applicant's nursing program of study, as determined by the Board, was conducted in English. Adopted §217.4(a)(2)(E) requires a registered nurse applicant to provide a Credential Evaluation Service Full Education Course-by-Course Report from the Commission on Graduates of Foreign Nursing Schools (CGFNS), Educational Records Evaluation Service (ERES), or the International Education Research Foundation (IERF) and an English proficiency test acceptable to the Board, or the equivalent which verifies that the applicant has achieved an approved score on an English proficiency test acceptable to the Board, unless a substantial portion of the applicant's nursing program of study, as determined by the Board, was conducted in English.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §§301.251, 301.252, and 301.151.

Section 301.251(a) provides that a person may not practice or offer to practice professional nursing or vocational nursing in this state unless the person is licensed as provided by Chapter 301.

Section 301.251(b) states that, unless the person holds a license under Chapter 301, a person may not use, in connection with the person's name: (i) the title "Registered Nurse"; "Professional Nurse"; "Licensed Vocational Nurse"; "Vocational Nurse"; "Licensed Practical Nurse"; "Practical Nurse"; or "Graduate Nurse"; (ii) the abbreviation "R.N.", "L.V.N.", "V.N.", "L.P.N.", or "P.N."; or (iii) any other designation tending to imply that the person is a licensed registered nurse or vocational nurse.

Section 301.251(c) provides that §301.251 does not apply to a person entitled to practice nursing in this state under Chapter 304.

Section 301.251(d) states that, unless the person holds a license under Chapter 301, a person may not use, in connection with the person's name: (i) the title "nurse"; or (ii) any other designation tending to imply that the person is licensed to provide nursing care.

Section 301.252(a) provides that each applicant for a registered nurse license or a vocational nurse license must submit to the Board a sworn application that demonstrates the applicant's qualifications under Chapter 301, accompanied by evidence that the applicant: (i) has good professional character; (ii) has successfully completed a program of professional or vocational nursing education approved under §301.157(d); and (iii) has passed the jurisprudence examination approved by the Board as provided by §301.252(a-1).

Section 301.252(a-1) provides that the jurisprudence examination shall be conducted on the licensing requirements under Chapter 301 and Board rules and other laws, rules, or regulations applicable to the nursing profession in this state. Further, the Board shall adopt rules for the jurisprudence examination under §301.252(a)(3) regarding: (i) the development of the examination; (ii) applicable fees; (iii) administration of the examination; (iv) reexamination procedures; (v) grading procedures; and (vi) notice of results.

Section 301.252(b) provides that the Board may waive the requirement of §301.252(a)(2) for a vocational nurse applicant if the applicant provides satisfactory sworn evidence that the ap-

plicant has completed an acceptable level of education in: (i) a professional nursing school approved under §301.157(d); or (ii) a school of professional nurse education located in another state or a foreign country.

Section 301.252(c) states that the Board by rule shall determine acceptable levels of education under §301.252(b).

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2011.

TRD-201101050

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Effective date: April 4, 2011

Proposal publication date: February 11, 2011

For further information, please call: (512) 305-6822



## PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

### CHAPTER 322. PRACTICE

#### 22 TAC §322.1

The Texas Board of Physical Therapy Examiners adopts amendments to §322.1, concerning Provision of Services, with changes to the proposed text as published in the December 10, 2010, issue of the *Texas Register* (35 TexReg 10804). The amendments clarify the standards for the provision of physical therapy services for licensees, employers and consumers. The board withdrew the proposed change to language regarding exceptions to referral requirement.

The amendments update references to documentation formats; rearrange and reword existing language regarding reevaluation and plans of care; and expand on requirements for documentation of physical therapy services.

Comments were received regarding the proposed changes from a number of individuals. The board is withdrawing proposed changes to §322.1(a)(2)(D), regarding treatment on the basis of a prior referral, having been persuaded by the comments that the new language was likely to cause confusion. The board did not add more information about the elements of an evaluation, a plan of care, or of a reevaluation as one comment suggested, as that information is available in other standard professional resources. It also declined to include terminology reflecting federal guidelines for the transmission of electronic information at this time, or to make several other nonsubstantive wording changes suggested.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code,

which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

*§322.1. Provision of Services.*

(a) Initiation of physical therapy services.

(1) Referral requirement. A physical therapist is subject to discipline from the board for providing physical therapy treatment without a referral from a qualified healthcare practitioner licensed by the appropriate licensing board, who within the scope of the professional licensure is authorized to prescribe treatment of individuals. The list of qualifying referral sources includes physicians, dentists, chiropractors, podiatrists, physician assistants, and advanced nurse practitioners.

(2) Exceptions to referral requirement.

(A) A PT may evaluate without referral.

(B) A PT may provide instructions to any person who is asymptomatic relating to the instructions being given without a referral, including instruction to promote health, wellness, and fitness.

(C) Emergency Circumstances. A PT may provide emergency medical care to a person after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity without referral if the absence of immediate medical attention could reasonably be expected to result in a serious threat to the patient's health, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(D) Prior referrals. A physical therapist may treat a patient for an injury or condition that is the subject of a prior referral if all of the following conditions are met.

(i) The physical therapist must notify the original referring healthcare personnel of the commencement of therapy by telephone within five days, or by letter postmarked within five business days;

(ii) The physical therapy provided must not be for more than 20 treatment sessions or 30 consecutive calendar days, whichever occurs first. At the conclusion of this time or treatment, the physical therapist must confer with the referring healthcare personnel before continuing treatment;

(iii) The treatment can only be provided to a client/patient who received the referral not more than one year previously; and

(iv) The physical therapist providing treatment must have been licensed for one year. The physical therapist responsible for the treatment of the patient may delegate appropriate duties to another physical therapist having less than one year of experience or to a physical therapist assistant. A physical therapist licensed for more than one year must retain responsibility for and supervision of the treatment.

(3) Methods of referral. A referral may be transmitted by a qualifying referral source in the following ways:

(A) in a written document, including faxed and emailed documents; or

(B) verbally, in person or by telephone. If a referral is transmitted verbally, whether in person or by telephone, it must be received, recorded and signed by the PT, PTA or other authorized personnel, and include all of the information that would appear on a written referral.

(b) Evaluation and screening.

(1) Evaluation. Physical therapy treatment may not be provided prior to the completion of an evaluation of the patient's condition by a PT.

(2) PTAs may screen patients designated by a PT as possible candidates for physical therapy services. Screening entails the collection of uniform information from all patients screened using a predetermined, standardized format. The information collected is delivered to the supervising PT. Only a PT may determine whether further intervention for patients screened is necessary.

(c) Physical therapy plan of care development and implementation.

(1) The PT must develop a written plan of care, based on his evaluation, for each patient.

(2) Treatment may not be provided by a PTA or aide until the plan of care has been established.

(3) The plan of care must be reviewed and updated as necessary following a reevaluation of the patient's condition.

(4) The plan of care or treatment goals may only be changed or modified by a PT.

(5) A PTA may modify treatment techniques as indicated in the plan of care.

(6) A PT or PTA must interact with the patient regarding his/her condition, progress and/or achievement of goals during each treatment session.

(d) Reevaluation.

(1) A patient receiving treatment must be reevaluated by a PT:

(A) at a minimum of once every 30 days after treatment is initiated, or at a higher frequency as established by the PT; and

(B) In response to a change in the patient's medical status that affects physical therapy treatment, when a change in the physical therapy plan of care is needed, or prior to any planned discharge.

(2) A reevaluation must include:

(A) An onsite reexamination of the patient; and

(B) A review of the plan of care with appropriate continuation, revision, or termination of treatment.

(3) Provision of physical therapy treatment by a PTA or an aide may not continue if the PT has not performed the required reevaluation.

(e) Documentation of treatment.

(1) At a minimum, documentation of physical therapy services must include the following:

(A) any referral authorizing treatment;

(B) the initial examination and evaluation;

(C) the plan of care;

(D) documentation of each treatment session by the PT or PTA providing the services;

(E) reevaluations as required by this section;

(F) any conferences between the PT and PTA, as described in this section; and

(G) the discharge summary.

(2) The PTA must include the name of the supervising PT in his documentation of each treatment session.

(3) Physical therapy aides may not write or sign any physical therapy documents in the permanent record. However, a physical therapy aide may enter quantitative data for tasks delegated by the supervising PT or PTA.

(4) Discharge Summary. The PT must provide final documentation for discharge of a patient, including patient response to treatment at the time of discharge and any necessary follow-up plan. A PTA may participate in the discharge summary by providing subjective and objective patient information to the supervising physical therapist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2011.

TRD-201101054

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: April 4, 2011

Proposal publication date: December 10, 2010

For further information, please call: (512) 305-6900



## 22 TAC §322.2

The Texas Board of Physical Therapy Examiners adopts amendments to §322.2, concerning Role Delineation, with changes to the proposed text as published in the December 10, 2010, issue of the *Texas Register* (35 TexReg 10806). The amendments establish clearer guidelines for licensees, employers and consumers regarding the provision of physical therapy services. The changes include the addition of language to make it clearer that the list of treatment programs that can be implemented by a PTA is not exclusive, to rectify grammar inconsistencies, and to revert to the existing language in the section regarding what a PTA may not do in the provision of physical therapy services.

The amendments add a subsection describing the role of the PT; delete paragraphs regarding the PTA that do not directly relate to the services the PTA may provide; and clarify the requirements for onsite supervision of a physical therapy aide.

Comments were received regarding the proposed changes. One comment suggested adding the phrase "but are not limited to" at the end of subsection (b)(2)(B), which the board has done to make it clear that the list is not exclusive. A second comment raised questions about the meaning of the proposed changes to subsection (b)(3)(A), and the board has withdrawn those. A third comment pointed out grammatical inconsistencies in subsection (b)(2)(C) - (E) which have been corrected.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

### §322.2. Role Delineation.

#### (a) The role of the PT.

(1) The PT holds primary responsibility for physical therapy care rendered under his supervision.

(2) The PT's professional responsibilities include, but are not limited to:

(A) Performance and documentation of the initial physical therapy examination and evaluation of the patient;

(B) Interpretation of the practitioner's referral;

(C) Development and documentation of a plan of care;

(D) Implementation of, or directing implementation of, the plan of care;

(E) Delegation of tasks to appropriate personnel;

(F) Direction and supervision of the PTA and physical therapy aide;

(G) Completion and accuracy of the patient's physical therapy record;

(H) Performance and documentation of the reexamination and reevaluation of the patient as described in this section; and when necessary, modification of the plan of care;

(I) Discharge of a patient or discontinuation of treatment;

(J) Development of any follow-up plan for the patient; and

(K) Collaboration with members of the health care team when appropriate.

(3) The PT shall not implement any plan of care that, in his judgment, is contraindicated.

#### (b) The role of the PTA.

(1) A PTA may provide physical therapy services only under the supervision of a PT (See §322.3 of this title (relating to Supervision)).

(2) A PTA may be assigned responsibilities by a supervising PT to:

(A) screen patients designated by a PT as possible candidates for physical therapy services (See §322.1(b) of this title (relating to Evaluation and screening));

(B) provide physical therapy services as specified in the physical therapy plan of care (See §322.1(c) of this title (relating to Physical therapy plan of care development and implementation)) which may include but are not limited to:

(i) preparing patients, treatment areas, and equipment;

(ii) implementing treatment programs that include therapeutic exercises; gait training and techniques; ADL training techniques; administration of therapeutic heat and cold; administration of ultrasound; administration of therapeutic electric current; administration of ultraviolet; application of traction; performance of intermittent venous compression; application of external bandages, dressings, and support; performance of goniometric measurement;

(iii) modifying treatment techniques as indicated in the plan of care;

(C) respond to acute changes in physiological state;

(D) teach other health care providers, patients, and families to perform selected treatment procedures and functional activities; and

(E) identify architectural barriers and report them to the PT.

(3) The PTA may not:

(A) specify and/or perform definitive (decisive, conclusive, final) evaluative and assessment procedures;

(B) alter a plan of care or goals;

(C) recommend wheelchairs, orthoses, prostheses, other assistive devices, or alterations to architectural barriers to persons;

(D) sign progress notes which design or modify the plan of care.

(c) The role of the physical therapy aide.

(1) All rules governing the services provided by a PTA are further modified for the physical therapy aide.

(2) A physical therapy aide may be assigned responsibilities by the supervising PT or PTA to provide services as specified in the physical therapy plan of care within the scope of on-the-job training with supervision by a PT or PTA who is on the premises and readily available to respond in person.

(3) A physical therapy aide may not:

(A) perform any evaluative or assessment activities;

(B) initiate physical therapy treatment, to include exercise instruction; or

(C) write or sign physical therapy documents in the permanent record, except as provided for in §322.1(e) of this title (relating to Documentation of treatment).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2011.

TRD-201101055

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: April 4, 2011

Proposal publication date: December 10, 2010

For further information, please call: (512) 305-6900



## 22 TAC §322.4

The Texas Board of Physical Therapy Examiners adopts amendments to §322.4, concerning Practicing in a Manner Detrimental to the Public Health and Welfare, without changes to the proposed text as published in the December 10, 2010, issue of the *Texas Register* (35 TexReg 10808). The amendment establishes clearer guidelines for licensees, employers and consumers regarding documentation of services and abandonment of patients.

The amendments clarify that failure to document treatment is, along with inaccurately or falsely documenting treatment, considered detrimental to the public health and welfare and may subject a license to disciplinary action by the board, and will add specific mention of abandonment or neglect of a patient to the list of actions that the board considers to be detrimental practice.

No comments were received regarding the proposed changes.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2011.

TRD-201101057

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: April 4, 2011

Proposal publication date: December 10, 2010

For further information, please call: (512) 305-6900



## CHAPTER 329. LICENSING PROCEDURE

### 22 TAC §329.5

The Texas Board of Physical Therapy Examiners adopts amendments to §329.5, concerning Licensing Procedures for Foreign-Trained Applicants, without changes to the proposed text as published in the December 10, 2010, issue of the *Texas Register* (35 TexReg 10809). The amendments make it easier for foreign-trained applicants to meet eligibility requirements for licensure in Texas.

The amendments eliminate the requirement that a person be physically in the U.S. prior to receiving a license; eliminate the requirement for a designated representative letter; make educational credentialing requirements for applicants by endorsement and examination the same regarding advanced placement exams; and lower the required score for the paper-based and computer-based TOEFL Test of Spoken English (TSE) to 50.

Comments were received from the Angelo State University Department of Physical Therapy regarding the proposed changes. The comment was in favor of the current amendments and suggested several more that the board may consider in the future.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2011.

TRD-201101058

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: April 4, 2011

Proposal publication date: December 10, 2010

For further information, please call: (512) 305-6900

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## 22 TAC §329.6

The Texas Board of Physical Therapy Examiners adopts amendments to §329.6, concerning Licensure by Endorsement, without changes to the proposed text as published in the December 10, 2010, issue of the *Texas Register* (35 TexReg 10811). The amendments would make it possible for the board to accept web-based verifications of licensure from other states if the board is certain the license information is valid.

The amendments allow the board to accept web-based verifications if the board is satisfied that information available online is secure, complete, and up-to-date.

One comment was received regarding the proposed changes; the individual wrote in support of the amendments.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2011.

TRD-201101059

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: April 4, 2011

Proposal publication date: December 10, 2010

For further information, please call: (512) 305-6900

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## CHAPTER 341. LICENSE RENEWAL

### 22 TAC §341.1

The Texas Board of Physical Therapy Examiners adopts amendments to §341.1, concerning Requirements for Renewal, without changes to the proposed text as published in the December 10, 2010, issue of the *Texas Register* (35 TexReg 10812). The amendments correct inconsistent rule reference formats and formally establish the online renewal transaction receipt as proof of renewal under certain conditions.

The amendments clarify in rule that a person who completes the renewal process online prior to the expiration of his license may use the printed transaction receipt in lieu of the certificate for the period of time specified on the receipt.

Several individuals commented on this proposal, suggesting a change to a pronoun in subsection (a); however, the board believes the grammar is correct as the last sentence in subsection (a) has a singular subject.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2011.

TRD-201101060

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: April 4, 2011

Proposal publication date: December 10, 2010

For further information, please call: (512) 305-6900

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## CHAPTER 345. ACCESSIBLE SERVICES

### 22 TAC §345.1

The Texas Board of Physical Therapy Examiners adopts the repeal of §345.1, concerning Accessible Services, without changes as published in the December 10, 2010, issue of the *Texas Register* (35 TexReg 10813). The repeal removes federal mandates from within the framework of board rules.

This section addresses the board's compliance with the Americans with Disabilities Act, Public Law 101-336. The board's authority to make rules stems from Chapter 453 of the Texas Occupations Code, and addresses the provision of physical therapy in the state. The board believes that compliance with a federal law is more appropriately addressed in board and agency policy and procedure.

No comments were received regarding the proposed repeal of this section and chapter.

The repeal is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2011.

TRD-201101061

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: April 4, 2011

Proposal publication date: December 10, 2010

For further information, please call: (512) 305-6900

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## PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

### CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

#### SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

## 22 TAC §661.46

The Texas Board of Professional Land Surveying adopts an amendment to §661.46, concerning seal and stamps used by a registered professional land surveyor. The amendment is adopted without changes to the proposed text as published in the November 19, 2010, issue of the *Texas Register* (35 TexReg 10141) and will not be republished.

The amendment will add language that will require an original signature and seal to be placed on electronic data that is retained by the surveyor.

A public hearing was held on proposed rules on December 17, 2010. One surveyor felt like this rule was redundant with notice regarding electronic signatures under another rule. Another comment questioned the benefit to the public and the profession of requiring that a company maintain an original seal and signature on a survey, noting trend to electronic documentation. The board took these comments under advisement.

The amendment is adopted pursuant to Title 6, Occupations Code, Subtitle C, §1071.151, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2011.

TRD-201101103

Frank DiTucci

Executive Director

Texas Board of Professional Land Surveying

Effective date: April 6, 2011

Proposal publication date: November 19, 2010

For further information, please call: (512) 239-5263



## 22 TAC §661.55

The Texas Board of Professional Land Surveying adopts an amendment to §661.55, concerning Surveying Firms Registration, that will clarify the rule regarding furnishing contract land surveying crews. The amendment is adopted without changes to the proposed text as published in the November 19, 2010, issue of the *Texas Register* (35 TexReg 10142) and will not be republished.

The amendment as currently written may be unclear to registrants as to the guidelines for firms furnishing contract land surveying crews.

A public hearing was held on the proposed amendment on December 17, 2010. The public felt like this amendment dilutes regulation and would allow for plan stamping. They discussed the importance of professionalism in protecting the public. There was a recommendation that the proposed rule be revised to read as follows: "Any person furnishing contract land surveying crews to natural persons, associations, partnerships, or corporations must be, or have as a full-time employee, as reflected in its registration form filed with the board, a registered professional land surveyor." The public felt that allowing the unsupervised use of contract survey crews such as may be practiced by some is an abdication of responsibilities stated under the Act and Rule §663.1 and in order to protect the welfare, property, economy

and security of the public such practice should be terminated forthwith. The board took all of the public comments under consideration.

The amendment is adopted pursuant to Title 6, Occupations Code, Subtitle C, §1071.151, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2011.

TRD-201101104

Frank DiTucci

Executive Director

Texas Board of Professional Land Surveying

Effective date: April 6, 2011

Proposal publication date: November 19, 2010

For further information, please call: (512) 239-5263



## CHAPTER 664. CONTINUING EDUCATION

### 22 TAC §664.9

The Texas Board of Professional Land Surveying adopts an amendment to §664.9, concerning Acceptable Carry-over Continuing Education Units/Hours, clarifying the terminology used in the rule. The amendment is adopted without changes to the proposed text as published in the November 19, 2010, issue of the *Texas Register* (35 TexReg 10142) and will not be republished.

The amendment as currently written may be unclear to registrants as to what a unit is. The addition of the word "hour" will clear any confusion that may exist.

A public hearing was held on December 17, 2010 regarding proposed amendments. The only comment received regarding continuing education was that the board should allow carryover of 12 continuing education units. The board has discussed this in the past and feels that the carryover should remain at 8 hours.

The amendment is adopted pursuant to Title 6, Occupations Code, Subtitle C, §1071.151, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2011.

TRD-201101105

Frank DiTucci

Executive Director

Texas Board of Professional Land Surveying

Effective date: April 6, 2011

Proposal publication date: November 19, 2010

For further information, please call: (512) 239-5263



## TITLE 25. HEALTH SERVICES

# PART 1. DEPARTMENT OF STATE HEALTH SERVICES

## CHAPTER 405. PATIENT CARE--MENTAL HEALTH SERVICES

### SUBCHAPTER L. HUMAN IMMUNODEFI- CIENCY VIRUS (HIV) PREVENTION, TESTING, AND TREATMENT

#### 25 TAC §§405.281 - 405.297

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §§405.281 - 405.297, concerning Human Immunodeficiency Virus (HIV) prevention, testing, and treatment, without changes to the proposal as published in the January 7, 2011, issue of the *Texas Register* (36 TexReg 25), and the sections will not be republished.

#### BACKGROUND AND PURPOSE

The repeal is necessary to better conform HIV prevention, testing, and treatment in state hospitals (Austin State Hospital, Big Spring State Hospital, El Paso Psychiatric Center, Kerrville State Hospital, North Texas State Hospital, Rusk State Hospital, San Antonio State Hospital, Terrell State Hospital, Rio Grande State Center, and Waco Center for Youth) to state law and the Centers for Disease Control and Prevention (CDC) guidelines regarding prevention, counseling, testing, and treatment.

The rules are no longer necessary because the requirements are covered sufficiently in other statutes, other rules, federal law, and departmental policy. The requirements for the rules are covered sufficiently in Health and Safety Code, Chapters 81, 85, 181, and 611; Civil Practice and Remedies Code, §74.104; the Health Insurance Portability and Accountability Act, Standards for Privacy of Individually Identifiable Health Information, 45 Code of Federal Regulations Parts 160 and 164; the Americans with Disabilities Act, 42 United States Code, §12101 *et seq.*; CDC *Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health Care-Settings*; 25 TAC §§97.131 - 97.146 and §§414.1 - 414.8; and the department's guidelines for HIV Testing in State Hospitals, Revised January 22, 2010.

In January 2010, the State Hospital Section issued a policy stipulating that the state hospitals would follow the CDC *Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health Care-Settings* last revised in 2006. That policy is located at [http://www.dshs.state.tx.us/mhsa/news/documents/070910\\_HIV-mtg\\_SH-HIV-Policy.pdf](http://www.dshs.state.tx.us/mhsa/news/documents/070910_HIV-mtg_SH-HIV-Policy.pdf). The benefits of following the CDC guidelines are that the CDC revises the guidelines frequently, the CDC develops the guidelines from substantial best practices research, and the guidelines represent a clear national standard. Additionally, the Joint Commission advises all accredited hospitals to adhere to the CDC guidelines (Sentinel Events Issue 28).

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 405.281 - 405.297 have been reviewed and the department has determined that reasons for adopting the sections no longer exist because the rules are no longer needed.

#### SECTION-BY-SECTION SUMMARY

The repeal of §§405.281 - 405.297 will eliminate unnecessary rules and bring the department into compliance with state and federal law and CDC guidelines.

#### COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed repeals during the comment period.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the repeals, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

#### STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §81.004, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to communicable diseases and Health and Safety Code; §85.003, which authorizes the department to adopt policies and guidelines for HIV education, prevention, risk reduction materials, policies, and information in this state; and by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 21, 2011.

TRD-201101117

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: April 10, 2011

Proposal publication date: January 7, 2011

For further information, please call: (512) 458-7111 x6972



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Education Agency

### Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 53, Regional Education Service Centers, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 53 are organized under Subchapter AA, Commissioner's Rules.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 53, Subchapter AA, continue to exist.

The public comment period on the review of 19 TAC Chapter 53, Subchapter AA, begins April 1, 2011, and ends May 2, 2011. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028.

TRD-201101160

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: March 23, 2011



## Adopted Rule Reviews

Texas Youth Commission

### Title 37, Part 3

Pursuant to Government Code §2001.039, the Texas Youth Commission (TYC) files this notice of readoption for 37 TAC Chapter 97 (Security and Control) and Chapter 99 (General Provisions). The proposed review was published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9747). No public comments were received regarding this review.

Except as noted below, TYC has determined that the reasons for adopting the rules contained in these chapters continue to exist and the rules are readopted without changes.

During the course of its review, TYC determined that the reasons for adopting Chapter 97, Subchapter B (relating to Peace Officers), no longer exist. The duties and responsibilities described by Subchapter B are governed by, and more appropriately addressed in, specific statutes and rules which apply to all peace officers in the State of Texas and by recently enacted portions of the Human Resources Code applicable to the TYC Office of Inspector General. Therefore, TYC is proposing the repeal of this subchapter, as published in the Proposed Rules portion of this issue of the *Texas Register*.

This concludes TYC's review of Chapters 97 and 99.

TRD-201101101

Toysha Martin

General Counsel

Texas Youth Commission

Filed: March 16, 2011





# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §75.11(b)

**MAXIMUM SANCTIONS TABLE**

<b>CATEGORY I. 1<sup>st</sup> Offense: \$1000* 2<sup>nd</sup> Offense: \$1000* 3<sup>rd</sup> Offense: \$1000* *and/or revocation</b>	
<b>Violation</b>	<b>Reference:</b>
Practicing without a chiropractic license	22 TAC §75.10(d) CA §201.301
Practicing with an expired license (nonrenewal due to default student loan)	22 TAC §73.2(c)(6) and (e) CA §§201.301, 201.351, 201.354(f)
Practicing with an expired license (nonrenewal)	22 TAC §73.2(i) CA §§201.301, 201.351, 201.354(f)
Practicing while on inactive status	22 TAC §73.4(f) CA §§201.301, 201.311(b)(2)
Practicing in non-compliance with continuing education requirements	22 TAC §§73.3, 73.5(g) CA §§201.301, 201.354(f)
Improper control of patient care and treatment	22 TAC §74.5(c)
Grossly unprofessional conduct	22 TAC §75.1 CA §201.502(a)(7)
Lack of diligence/gross inefficient practice	22 TAC §75.2 CA §201.502(a)(18)
Practicing outside the scope of practice of chiropractic	22 TAC §§75.2, 75.17 CA §§ 201.002, 201.502(a)(1) and (18)
Performing radiologic procedures without registering, with an expired registration, or without DSHS approval; failure to renew (including non-payment of fees)	22 TAC §78.1(a), (d), (h)
MRTCA, DSHS rules or order	22 TAC §78.1(h), (j), (o)
Performing (1) radiologic procedures without supervision, or (2) cineradiography or other restricted procedure	22 TAC §78.1(g), (k), (l), (m)
Permitting a non-registered or non-DSHS approved person to perform radiologic procedures or CRT to perform procedures without supervision	22 TAC §78.1(k), (n)
Delegating to a non-licensee authority to perform adjustments or manipulations	22 TAC §80.1(a)
Failure to supervise a student	22 TAC §80.1(b)
Delegating authority to a licensee whose license has been suspended or revoked	22 TAC §80.1(d)

Failure to comply with the CA, other law or a board order or rule	22 TAC §75.10(c) CA §§201.501, 201.502(a)(1)
Failure to comply with down-time restrictions	22 TAC §75.10(f)
Medicaid fraud	CA §201.502(a)(2), (7); HRC §§36.002, 36.005
Solicitation	Occ. Code §§102.001, 102.006
Default on Student Loan	Occ. Code §56 22 TAC §80.2
Failure to comply with requirements/restrictions on prepaid treatment plans	22 TAC §80.13
Failure to respond to board inquiries	22 TAC §§73.3(1)(C), 75.3(h), 75.6, 80.3(g)
Failure to report criminal conviction	22 TAC §75.3(f)
Other statutory violations	CA §201.502(a)(2) - (8), (10), (12) - (17), (19) - (20)
<b>CATEGORY II. 1<sup>st</sup> Offense: \$500 2<sup>nd</sup> Offense: \$750* 3<sup>rd</sup> Offense: \$1000* *and/or suspension</b>	
<b>Violation</b>	<b>Reference</b>
Submitting an untrue continuing education certification	22 TAC §73.3(1)(E) CA §201.502(a)(2)
Operating a facility without a certificate of registration or with an expired registration	CA §201.312 22 TAC §§74.2(a), 74.3(e), 74.5(a)
Practicing in a facility without a certificate of registration or with an expired registration	CA §201.312 22 TAC §74.2(k)
Unauthorized disclosure of patient records	22 TAC §80.3 CA §§201.402, 201.405
Overtreating/overcharging a patient	22 TAC §75.1(a)(4) HPCA §101.203
Deceptive advertising and other prohibited advertising	22 TAC §77.2 CA §201.502(a)(2), (9), (11); HPCA §101.201
<b>CATEGORY III. 1<sup>st</sup> Offense: \$250 2<sup>nd</sup> Offense: \$500* 3<sup>rd</sup> Offense: \$1000* *and/or suspension</b>	
<b>Violation</b>	<b>Reference</b>
Failure to furnish patient records Overcharging for copies of patient records	22 TAC §80.3 CA §201.405(f)
Failure to disclose charges to patient	22 TAC §§75.1(a)(6), 77.3(a) HPCA §101.202
Failure to submit to medical examination	22 TAC §80.3(h)

Failure to maintain patient records	22 TAC §80.5
<b>CATEGORY IV. 1<sup>st</sup> Offense: \$250 2<sup>nd</sup> Offense: \$500 3<sup>rd</sup> Offense: \$1000</b>	
Violation	Reference
Failure to display public interest information Displaying an invalid license or renewal card	22 TAC §§75.7(d), (e), 75.8 CA §201.502(a)(2), (9)
Failure to complete CRT continuing education	22 TAC §78.1(i)
<b>CATEGORY V. 1<sup>st</sup> Offense: \$250 2<sup>nd</sup> Offense: \$400 3<sup>rd</sup> Offense: \$500</b>	
Violation	Reference
Failure to report change of address	22 TAC §73.1
Failure to report change of facility address/ownership	22 TAC §74.5(d)
Failure to report <i>locum tenens</i> information	22 TAC §73.2(b)
Use of the term "physician," "chiropractic physician"	CA §201.502(a)(22)
Failure to use "chiropractor," "D.C." in advertising	22 TAC §75.1(a)(2)

Figure: 22 TAC §329.2(f)(2)(C)

**ADDITIONAL EDUCATION REQUIREMENTS  
FOR LICENSURE APPLICANTS WHO FAIL THE NATIONAL EXAMINATION**

<b>Additional Education Requirements for Licensure Applicants Who Fail the National Examination</b>		
Requirements based on: 1) number of failures AND 2) exam score (passing = 600)	Tutorial Hour Requirements	CCU Requirements
<b>A. Applicants who fail the exam 2 or 3 times</b>		
PT.....599 - 586    PTA.....599 - 584	25 hours tutorial	<b>15</b> [4-5] CCUs
PT.....585 - 566    PTA.....583 - 560	40 hours tutorial	<b>20</b> [2-9] CCUs
PT.....565 & below PTA.....560 & below	80 hours tutorial	<b>40</b> [4-9] CCUs
<b>B. Applicants who fail the exam 4 times</b>		
PT.....599 - 586    PTA.....599 - 584	50 hours tutorial	<b>30</b> [3-9] CCUs
PT.....585 - 566    PTA.....583 - 560	80 hours tutorial	<b>40</b> [4-9] CCUs
PT.....565 & below PTA.....560 & below	160 hours tutorial	<b>80</b> [8-9] CCUs
<b>C. Applicants who fail the exam 5, 6, or 7 times</b>		
PT.....599 - 586    PTA.....599 - 584		<b>60</b> [6-9] CCUs
PT.....585 - 566    PTA.....583 - 560		<b>90</b> [9-9] CCUs
PT.....565 & below PTA.....560 & below		<b>150</b> [15-9] CCUs
<b>D. Applicants who fail the exam 8 or more times must repeat an accredited PT or PTA program.</b>		

Figure: 25 TAC §415.314(1)

NOTICE OF HEARING BY FACILITY REVIEW BOARD

DATE:

TO: (NAME OF INDIVIDUAL AND LAR, IF ANY)

(NAME OF INDIVIDUAL) has exhibited behavior indicating he/she may be manifestly dangerous. The facility review board at (NAME OF FACILITY) will conduct a hearing to determine whether or not he/she is manifestly dangerous. The hearing is scheduled for (DATE AND TIME) at (LOCATION OF HEARING). If (NAME OF INDIVIDUAL) is determined manifestly dangerous, then he/she will be transferred to the maximum security unit/secure adolescent unit (MSU/SAU) at the Vernon campus of North Texas State Hospital for treatment.

You will be provided:

a copy of the documentation of evidence indicating possible manifest dangerousness that will be submitted to the facility review board; and  
a copy of DSHS rules governing the determination of manifest dangerousness (25 Texas Administrative Code, Part 1, Chapter 415, Subchapter G).

You have the right to represent yourself at the hearing or be represented by a spokesperson of your choice. You and your spokesperson have the right to be present at the hearing. You or your spokesperson have the right to:

present witnesses on behalf of (NAME OF INDIVIDUAL);  
present evidence and establish all pertinent facts and circumstances;  
present an argument on any issue involved;  
cross-examine witnesses; and  
respond to or refute any testimony or evidence.

If you have any questions concerning this notice, the hearing, or your rights you may contact (NAME AND PHONE NUMBER OF CONTACT PERSON) who will assist you.

\*\*\*\*\*

I hereby acknowledge receipt of this NOTICE OF HEARING BY FACILITY REVIEW BOARD.

\_\_\_\_\_  
(Signature of individual who is the subject of the hearing)

\_\_\_\_\_  
(Date received)

\_\_\_\_\_  
(Signature of LAR, if any)

\_\_\_\_\_  
(Date received)

\_\_\_\_\_  
(Signature of person delivering notice)

\_\_\_\_\_  
(Date delivered)

Figure: 25 TAC §415.314(2)

NOTICE OF HEARING BY DSHS DANGEROUSNESS REVIEW BOARD

DATE:

TO: (NAME OF INDIVIDUAL AND LAR, IF ANY)

The DSHS Dangerousness Review Board will conduct a hearing to determine whether or not (NAME OF INDIVIDUAL) is manifestly dangerous. The hearing is scheduled for (DATE AND TIME) at (LOCATION OF HEARING). If (NAME OF INDIVIDUAL) is determined manifestly dangerous, then he/she will remain at the maximum security unit/secure adolescent unit (MSU/SAU) at the Vernon Campus of North Texas State Hospital for treatment. If (NAME OF INDIVIDUAL) is determined not manifestly dangerous, then he/she will be transferred from the MSU/SAU to another DSHS facility.

You will be provided:

a copy of the documentation that will be submitted to the DSHS Dangerousness Review Board; and  
a copy of DSHS rules governing the determination of manifest dangerousness (25 Texas Administrative Code, Part 1, Chapter 415, Subchapter G).

You have the right to represent yourself at the hearing or be represented by a spokesperson of your choice. You and your spokesperson have the right to be present at the hearing. You or your spokesperson have the right to:

present witnesses on behalf of (NAME OF INDIVIDUAL);  
present evidence and establish all pertinent facts and circumstances;  
present an argument on any issue involved;  
cross-examine witnesses; and  
respond to or refute any testimony or evidence.

If you have any questions concerning this notice, the hearing, or your rights you may contact (NAME AND PHONE NUMBER OF CONTACT PERSON) who will assist you.

\*\*\*\*\*

I hereby acknowledge receipt of this NOTICE OF HEARING BY FACILITY REVIEW BOARD.

\_\_\_\_\_  
(Signature of individual who is the subject of the hearing)

\_\_\_\_\_  
(Date received)

\_\_\_\_\_  
(Signature of LAR, if any)

\_\_\_\_\_  
(Date received)

\_\_\_\_\_  
(Signature of person delivering notice)

\_\_\_\_\_  
(Date delivered)

Figure: 40 TAC §97.602(h)(2)(D)

<b>SEVERITY LEVEL A VIOLATIONS</b> <b>\$100 - \$250 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.212	Prohibiting material alteration of a license.
§97.213(a)-(b) separate penalties	Agency relocation.
§97.214(a)-(b) separate penalties	Notification procedures for reporting a change in agency telephone number and agency operating hours.
§97.216(a)	Change in agency certification or accreditation status.
§97.217(b)(1)-(2) separate penalties	Procedures for notifying DADS of a voluntary suspension of operations.
§97.218(a)-(b) separate penalties	Notice of agency organizational changes and submitting criminal history check consent forms.
§97.219	Procedure for adding or deleting a category of service to the agency's license.
§97.220(a)(2)	Providing services only within an agency's licensed service area.
§97.220(c)	Providing a written notification of an expansion of an agency's licensed service area.
§97.220(d)	Providing written notification of a reduction of an agency's licensed service area.
§97.242(a)-(b) separate penalties	Preparing and maintaining a current written description of the agency's organizational structure.
§97.243(b)(1)(A)-(B) and (D)-(G) separate penalties	Responsibilities of the administrator.
§97.243(b)(3)	Requirement that the administrator designate in writing an agency employee who must provide DADS surveyors entry to the agency.
§97.243(d)	Adoption of a written policy for the supervision of branch offices or alternate delivery sites, if established.
§97.244(b)(1)-(5) separate penalties	Conditions of the agency administrator and alternate administrator.
§97.245(a)-(b)(1)-(10) separate penalties	Adoption and enforcement of written policies governing all personnel staffed by the agency.
§97.246(a)(1)-(6)(A)-(B) and (b) separate penalties	An agency's personnel records and content of such records.
§97.247(a)(4) and (b)(4) separate penalties	Providing unlicensed employees and volunteers with written information about the employee misconduct registry.
§97.247(c)	Documentation of compliance with verifying the employability and use of unlicensed applicants, employees, and volunteers.
§97.248(a)-(b)(1)-(4) separate penalties	The use of volunteers in an agency.



<b>SEVERITY LEVEL A VIOLATIONS</b> <b>\$100 - \$250 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.249(b)	Adoption of a written policy for the reporting of alleged acts of abuse, neglect, and exploitation of clients.
§97.250(a)	Adoption of a written policy covering procedures for investigating known and alleged acts of abuse, neglect, and exploitation and other complaints.
§97.250(e)	Prohibiting an agency from retaliating against a person for filing a complaint, presenting a grievance, or providing, in good faith, information about the services provided by the agency.
§97.251	Adoption of a written policy for ensuring that all professional disciplines comply with their respective professional practice acts or title acts for reporting and peer review.
§97.253	Adoption of a written policy describing whether an agency will conduct drug testing of employees that describes the method and provides a copy of the policy.
§97.254	Adoption of a written policy for ensuring that the agency submits accurate billings and insurance claims.
§97.255	Adoption of a written policy for prohibition of illegal remuneration for securing or soliciting clients or patronage.
§97.256(a)	Having a written emergency preparedness and response plan based on a risk assessment.
§97.256(b)(1)-(4) separate penalties	Agency personnel responsible for developing, maintaining and implementing a written emergency preparedness and response plan.
§97.256(c)(1)-(5) separate penalties	Contents of a written emergency preparedness and response plan.
§97.256(d)(1)-(4) separate penalties	Response and recovery phases of a written emergency preparedness and response plan.
§97.256(e)(1)-(2) separate penalties	Procedures to triage clients in a written emergency preparedness and response plan.
§97.256(f)	Procedures in a written emergency preparedness and response plan to identify a client who may need evacuation assistance.
§97.256(g)	Assisting a client as requested to register with 2-1-1 for evacuation assistance.
§97.256(h)(1)-(4) separate penalties	Counseling each client about emergency preparedness.
§97.256(i)	Training agency personnel in their responsibilities in a written emergency preparedness and response plan.
§97.256(j) and (k) separate penalties	Annual review and update of a written emergency preparedness and response team plan and annual test of the response phase of the plan.
§97.256(l)	Good faith effort to comply with rules on emergency preparedness planning and implementation.
§97.256(n)	Reproducing client records damaged during a disaster.

<b>SEVERITY LEVEL A VIOLATIONS</b> <b>\$100 - \$250 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.256(o)(1)-(2) and (p) separate penalties	Notice of temporary changes due to an emergency or disaster.
§97.259(g)	Prohibiting use of the presurvey conference to meet initial training requirements for a first-time administrator and alternate administrator.
§97.260(d)	Prohibiting use of the pre-survey conference to meeting continuing education requirements for an administrator and alternate administrator.
§97.281(1)-(16) separate penalties	Adoption of a written policy that specifies the agency's client care practices.
§97.282(a)-(b), (d)-(f)(1)-(8), and (g)-(h) separate penalties	Adoption of a written policy governing client conduct and responsibility and client rights.
§97.284	Adoption of a written policy for complying with the Clinical Laboratory Improvement Amendments of 1988, 42 USC, §263a, Certification of Laboratories (CLIA 1988).
§97.285	Adoption of written policies addressing infection control.
§97.285(1)(A)-(C) and (2) separate penalties	Adoption and compliance with a written policy that addresses infection control.
§97.286(a)	Adoption of a written policy for safe handling and disposal of biohazardous waste and materials, if applicable.
§97.288(a)	Adoption of a written policy that all service providers involved in the care of a client effectively coordinate the client's care.
§97.289(c)(2)	Providing written information about the employee misconduct registry to an unlicensed person providing services under arrangement.
§97.289(e)(1)-(3) separate penalties	Documentation of personnel qualifications and for unlicensed staff that provide services under arrangement.
§97.290(a)	Adoption of a written policy for ensuring that backup services are available when an agency employee or contractor is not available to deliver the services.
97.290(a)(1)-(2)	Documentation that a client's designee agreed to provide backup services.
97.290(a)(3)	Not coercing a client to accept backup services.
§97.290(b)	Adoption of a written policy for ensuring that clients are educated in how to access care from the agency or another health care provider after regular business hours.
§97.291	Adoption of a written policy for an agency's written contingency plan.
§97.292(a)	Providing a client or a client's family with a written agreement for services and ensuring appropriate content of the agreement.
97.292(b)	Obtaining acknowledgment that the client received an appropriate written agreement for services and ensuring that the acknowledgment is in the client's record.
§97.293	Maintaining a current list of clients for each category of service licensed.

<b>SEVERITY LEVEL A VIOLATIONS</b> <b>\$100 - \$250 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.294	Adoption of a written policy for establishing a time frame for the initiation of care or services.
§97.295(c), (d), and (f) separate penalties	Delivery of written notice and documentation requirements pertaining to an agency's transfer or discharge of a client.
§97.296(a)	Adoption of a written policy that states whether physician delegation will be honored by the agency.
§97.296(b)	Information the agency must receive to accept physician delegation.
§97.297	Adoption of a written policy describing protocols and procedures agency staff must follow when receiving physician orders, if applicable.
§97.297(2)	Physician orders received by facsimile.
§97.298	Adoption of a written policy for ensuring compliance with rules adopted by the Texas Board of Nursing in 22 TAC Chapter 224 (Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments) and 22 TAC Chapter 225 (RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).
§97.299	Adoption of a written policy for ensuring compliance with rules of the Texas Board of Nursing adopted at 22 TAC Chapters 211-226 (Nursing Continuing Education, Licensure, and Practice in the State of Texas).
§97.300(b)	Adoption of a written policy for maintaining a current medication list and a current medication administration record.
§97.300(b)(2)(A)-(B) separate penalties	The administration of medication.
§97.301(a)(1)-(9)(A)-(P) separate penalties	Requirements for maintaining an agency's client records.
§97.301(b)(1)-(3) separate penalties	Adoption and enforcement of a written policy for retention of records.
§97.302	Adoption of a written policy for pronouncement of death if that function is carried out by an agency registered nurse.
§97.321(a)	Branch office compliance with the regulations of its parent agency.
§97.321(c)(1)	Providing services only within a branch office licensed service area.
§97.321(c)(3)	Providing a written notification of an expansion of a branch office service area.
§97.321(c)(4)	Providing written notification of a reduction of a branch office licensed service area.
§97.321(d)(1)-(3) separate penalties	Requirements for branch offices.
§97.321(f)	Requirement prohibiting branch offices from providing services not offered by the parent agency.
§97.322(a)	Alternate delivery site compliance with hospice services standards.

<b>SEVERITY LEVEL A VIOLATIONS</b> <b>\$100 - \$250 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.322(b)	An alternate delivery site's independent compliance with §97.403(c), (f)(1), (i), and §97.301.
§97.322(c)(1)	Providing services only within an alternate delivery site licensed service area.
§97.322(c)(3)	Providing a written notification of an expansion of an alternate delivery site service area.
§97.322(c)(4)	Providing written notification of a reduction of an alternate delivery site licensed service area.
§97.322(d)(1)-(3) separate penalties	Requirements for hospices and alternate delivery sites.
§97.401(f)	The use of home health aides.
§97.402(b)	Requirement for implementing a home health aide training and competency program.
§97.403(b)	Restriction on use of the word "hospice" in a title or description of a facility, organization, program, service provider, or services without a license.
§97.403(c)	Adoption of a written policy for the provision of hospice services.
§97.403(e)(3)	Designating which among multiple interdisciplinary teams is responsible for establishing the policies governing day-to-day hospice functions.
§97.403(f)(4)	Retaining responsibility for payment for services.
§97.403(j)	Requirement that reassessment of a client must not reduce core services.
§97.403(k)	Informing the client of the availability of short-term inpatient care.
§97.403(l)	Making and documenting efforts to arrange for visits of clergy and other members of spiritual and religious organizations.
§97.403(u)(4)	Specifying the persons authorized to administer medications in the client's plan of care.
§97.403(w)(2)(A)-(G) separate penalties	Development and documentation of a written emergency preparedness and response plan for a freestanding hospice in the event of a disaster.
§97.403(w)(5)-(6) and (8) separate penalties	Physical plant requirements in a freestanding hospice that provides inpatient care.
§97.403(w)(11)(A)-(D) separate penalties	Providing and supervising meal service in a freestanding hospice that provides inpatient care.
§97.404(e)	Requirement that an agency develops operational policies that are considerate of the principles of individual and family choice and control, functional need, and accessible and flexible services.
§97.404(f)(1)-(3) separate penalties	Additional requirements for maintaining client records in an agency that provides personal assistance services.
§97.404(g)	Adoption of a written policy that addresses the supervision of agency personnel with input from the client or family on the frequency of supervision.

<b>SEVERITY LEVEL A VIOLATIONS</b> <b>\$100 - \$250 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.404(g)(1)-(2) separate penalties	Conditions and qualifications for supervision of agency personnel delivering personal assistance services.
§97.405(d)	Requirement for individual personnel files on all physicians.
§97.405(g)	A written transfer agreement with a local hospital for an agency that provides home dialysis services.
§97.405(h)	An agreement with a licensed end stage renal disease facility to provide backup outpatient dialysis services.
§97.405(j)	Ensuring that names of clients awaiting a donor transplant are entered in the recipient registry program.
§97.405(s)(1) and (4)-(7) separate penalties	Additional requirements for maintaining client records in an agency that provides home dialysis services.
§97.405(v)	Development of a written preventive maintenance program for home dialysis equipment.
§97.405(v)(1)(B)	Maintaining written evidence of preventive maintenance and equipment repairs.
§97.405(z)	Adoption of policies and procedures for medical emergencies and emergencies resulting from a disaster required of an agency that provides home dialysis services.
§97.406(1)	Adoption of a written policy for the provision of psychoactive treatments, if applicable.
§97.521(a)	Requirement for initiation of services for receiving an initial license.
§97.523(a)	Staff availability for the initial survey.
§97.523(b)	Staff availability for survey other than the initial survey.
§97.523(e)	Providing surveyor entry to the agency during regular business hours and within two hours of the surveyor's arrival at the agency.
97.525(c)	Having documentation of accreditation available at the time of a survey.
§97.527(b)	Providing surveyor with audio recording of the exit conference if made by the agency.
§97.527(c)	Providing surveyor with video recording of the exit conference if made by the agency.
§97.527(g)(1)-(2)(A)-(D)	Submitting an acceptable plan of correction and correcting a violation within the required time frame.

Figure: 40 TAC §97.602(h)(3)(E)

<b>SEVERITY LEVEL B VIOLATIONS</b> <b>\$500 - \$1,000 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.11(d)	Requirement to have a separate license for each place of business.
§97.23	A license may not be sold or assigned to another person.
§97.220(b)	Maintaining adequate staff to provide services and supervise the provision of services within the service area.
§97.241(a), (c), and (d) separate penalties	Management responsibilities.
§97.243(a)(1)	Designating a qualified agency administrator.
§97.243(a)(2)	Designating a qualified agency alternate administrator.
§97.243(b)(1)(A)-(F) and (2)-(3) separate penalties	Responsibilities of an agency administrator.
§97.243(c)(1)	Requirement to directly employ or contract with a qualified individual to serve as the supervising nurse.
§97.243(c)(2)	Requirement to designate a qualified alternate supervising nurse.
§97.243(c)(2)(A)(i)-(iv) separate penalties	Supervisory responsibilities of the supervising nurse or alternate supervising nurse.
§97.243(c)(2)(B)	Allowing the supervising nurse to be the administrator if the supervising nurse meets the qualifications of the administrator.
§97.243(c)(3)	Requirements for the supervision of physical, occupational, speech, or respiratory therapy; medical social services; or nutritional counseling.
§97.243(d)	Enforcing a written policy for the supervision of branch offices or alternate delivery sites, if established.
§97.244(a)(1)	Qualifications of the agency administrator and alternate administrator for agencies licensed to provide licensed home health services, licensed and certified home health services or hospice services.
97.244(a)(2)	Qualifications of the agency administrator and alternate administrator for agencies licensed to provide only personal assistance services.
§97.244(b)(1)-(5) separate penalties	Conditions of the agency administrator and alternate administrator.
§97.244(c)(1)	Qualifications of the supervising nurse and alternate supervising nurse for agencies without the home dialysis designation.
§97.244(c)(2)	Qualifications of the supervising nurse and alternate supervising nurse for agencies with the home dialysis designation.
§97.245(a)-(b)(1)-(10) separate penalties	Enforcement of staffing policies that govern all personnel used by the agency.
§97.247(a)(1)-(3) and (5)(A)-(B)-(6)(A)-(B) and (b)(1)-(3) and (5)(A)-(B)-(6)(A)-(B) separate penalties	Verifying the employability and use of unlicensed applicants, employees and volunteers.
§97.249(c)	Reporting alleged acts of abuse, neglect, and exploitation of clients.

<b>SEVERITY LEVEL B VIOLATIONS</b> <b>\$500 - \$1,000 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.250(b)(1)-(3), (c)(1)-(2), and (d)-(e) separate penalties	Enforcement of an agency's written policy for investigation of known and alleged acts of abuse, neglect, and exploitation and other complaints.
§97.251	Compliance with the agency's written policy to ensure that all professional disciplines comply with their respective professional practice acts or title acts for reporting and peer review.
§97.252(1)-(2)	An agency's financial ability to carry out its functions.
§97.256(a)	Having a written emergency preparedness and response plan based on a risk assessment.
§97.256(b)(1)-(4) separate penalties	Agency personnel responsible for developing, maintaining and implementing a written emergency preparedness and response plan.
§97.256(c)(1)-(5) separate penalties	Contents of a written emergency preparedness and response plan.
§97.256(d)(1)-(4) separate penalties	Response and recovery phases of a written emergency preparedness and response plan.
§97.256(e)(1)-(2) separate penalties	Procedures to triage clients in a written emergency preparedness and response plan.
§97.256(f)	Procedures in a written emergency preparedness and response plan to identify a client who may need evacuation assistance.
§97.256(g)	Assisting a client as requested to register with 2-1-1 for evacuation assistance.
§97.256(h)(1)-(4) separate penalties	Counseling each client about emergency preparedness.
§97.256(i)	Training agency personnel in their responsibilities in a written emergency preparedness and response plan.
§97.256(j) and (k) separate penalties	Annual review and update of a written emergency preparedness and response plan and annual test of the response phase of the plan.
§97.256(l)	Good faith effort to comply with rules on emergency preparedness planning and implementation.
§97.256(n)	Reproducing client records damaged during a disaster.
§97.256(o)(1)-(2) and (p) separate penalties	Notice of temporary changes due to an emergency or disaster.
§97.259(b)-(e) separate penalties	Initial educational training requirements for a first-time agency administrator and alternate administrator.
§97.259(f)	Documentation requirements for initial educational training of a first-time administrator and alternate administrator.
§97.260(a)	Annual continuing education requirements for an agency administrator and alternate administrator.
§97.260(b)	Continuing education requirements for an agency administrator and alternate administrator who has not served for 180 days or more immediately preceding the date of designation.
§97.260(c)	Documentation requirements for continuing education of an administrator and alternate administrator.

<b>SEVERITY LEVEL B VIOLATIONS</b> <b>\$500 - \$1,000 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.281(1)-(16) separate penalties	Enforcement of a written policy for client care practices.
§97.282(a)-(f)(1)-(8) and (g)-(h) separate penalties	Compliance with an agency policy on client conduct and responsibility and client rights.
§97.284	Compliance with the Clinical Laboratory Improvement Amendments of 1988.
§97.285	Compliance with written policies addressing infection control.
§97.285(1)(A)-(C) and (2) separate penalties	Enforcement and compliance with written policies on infection control.
§97.286(b)	Compliance with 25 TAC §§1.131-1.137 concerning the Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities.
§97.287(a)(1)-(3) and (b)-(c) separate penalties	An agency's Quality Assessment and Performance Improvement Program.
§97.288(a)-(b) separate penalties	Compliance with an agency's written policy for coordination of services and documentation requirements.
§97.289(a)-(b) separate penalties	An agency's use of and agreement with independent contractors and arranged services.
§97.289(c)(1) and (3) separate penalties	Initial searches and searches at least every 12 months of the nurse aide registry and employee misconduct registry for unlicensed staff providing services under arrangement.
§97.289(d)(1)-(2) separate penalties	Conducting and reviewing a criminal history check for an unlicensed person that provides services under arrangement.
§97.290(a)	Enforcing a written policy that backup services are available when needed.
§97.290(a)(1)-(2)	Documentation that a client's designee agreed to provide backup services.
§97.290(b)	Enforcing a written policy that clients are educated in how to access care after hours.
§97.291(1)-(2) separate penalties	Implementing a written policy for an agency's written contingency plan.
§97.292(a)	Complying with the terms of a written agreement for services that the agency provided to a client or a client's family.
§97.295(a)(1)-(2) separate penalties	Providing a client with written notification, and notifying a client's attending physician if applicable, of transfer or discharge.
§97.295(b)	An agency providing written notification of a client's transfer or discharge within the required time frame.
§97.296(a)	Enforcement of an agency's policy regarding acceptance of physician delegation orders.
§97.296(b)	Information the agency must receive to accept physician delegation.
§97.297	Enforcement of a written policy describing protocols and procedures agency staff must follow when receiving physician orders, if applicable.



<b>SEVERITY LEVEL B VIOLATIONS</b> <b>\$500 - \$1,000 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.297(1)	Countersignature of physician verbal orders.
§97.298	Enforcement of a written policy for ensuring compliance with the rules adopted by the Texas Board of Nursing in 22 TAC Chapter 224 (Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments) and 22 TAC Chapter 225 (RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).
§97.300(b)	Enforcement of a written policy for maintaining a current medication list and a current medication administration record.
§97.300(b)(1)-(2)(A)-(B) and (3) separate penalties	The administration of medication.
§97.303(1)-(3)(A)-(F) separate penalties	The possession and use of sterile water or saline, certain vaccines or tuberculin, and certain dangerous drugs.
§97.321(c)(2)	Maintaining adequate staff to provide and supervise services at a branch office.
§97.322(c)(2)	Maintaining adequate staff to provide and supervise services at an alternate delivery site.
§97.401(b)(1)-(2)(A)-B) separate penalties	Acceptance of a client for home health services and the initiation of services.
§97.401(d)	Requirement that qualified personnel provide and supervise all services.
§97.401(e)	Requirement that all staff providing services, delegation, and supervision be employed by or be under contract with the agency.
§97.401(g)	Age and competency of unlicensed persons providing licensed home health services.
§97.402(a)	Compliance with the Medicare Conditions of Participation (Social Security Act, Title 42, Code of Federal Regulations, Part 484.)
§97.402(c)-(e) separate penalties	Compliance with §97.701(f) of this chapter (relating to Home Health Aides) for an agency that implements a competency evaluation program.
§97.403(a)	Compliance with the Social Security Act and the regulations in Title 42, Code of Federal Regulations, Part 418.
§97.403(c)	Enforcement of a written policy for the provision of hospice services.
§97.403(d)(1)-(3) separate penalties	Requirement and conditions of the medical director for an agency that provides hospice services.
§97.403(e)(1)(A)-(D) separate penalties	Composition of an interdisciplinary team or teams.
§97.403(e)(2)(A)-(D) separate penalties	Responsibilities of the interdisciplinary team.
§97.403(e)(4)	Designating a registered nurse to coordinate implementation of the plan of care for each client.

<b>SEVERITY LEVEL B VIOLATIONS</b> <b>\$500 - \$1,000 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.403(f)(1)	Ensuring continuity of client and family care in home and outpatient and inpatient settings.
§97.403(f)(2)	Contract requirements for providing arranged services.
§97.403(f)(3)	Professional management responsibility for arranged services.
§97.403(f)(5)	Ensuring that inpatient care is furnished only in a licensed facility and according to contract requirements.
§97.403(g)(1)-(3) separate penalties	Time requirements for contacting the client or client's representative, performing the initial health assessment visit, and initiation of services.
§97.403(h)	Performing and making available to each client a comprehensive health assessment that identifies the client's needs.
§97.403(h)(1)	Completing the comprehensive health assessment in a timely manner.
§97.403(h)(2)(A)-(C) separate penalties	Composition of the comprehensive health assessment.
§97.403(h)(3)(A)-(B) separate penalties	Requirement for updating and revising the comprehensive health assessment.
§97.403(i)(1)-(3) separate penalties	Requirements for a written plan of care.
§97.403(m)	Ensuring that all core services are provided, and requirements for using contracted staff, if necessary.
§97.403(n)(1)-(3) separate penalties	Requirements for providing nursing care and services.
§97.403(o)	Qualifications of the social worker performing hospice services.
§97.403(p)	Requirements for ensuring that general medical needs of clients are met.
§97.403(q)(1)-(4) separate penalties	Requirements for providing counseling services.
§97.403(r)	Requirements for providing services, maintaining a system for ensuring identification of client needs, communication across all disciplines, and integration of services.
§97.403(s)	Requirements for having therapy services available.
§97.403(t)	Requirements for having home health aide and homemaker services available.
§97.403(t)(1)-(2) separate penalties	Requirements for RN supervisory visits to assess aide services.
§97.403(u)(1)-(3) separate penalties	Requirements for providing medical supplies, appliances, and medications, as needed, for palliation and management of terminal illness and related conditions.
§97.403(v)	Requirements that inpatient care be available for pain control, symptom management, and respite.
§97.403(v)(1)	Requirements for providing inpatient care.
§97.403(v)(2)(A)-(B) separate penalties	Requirements for a quality assessment and performance improvement plan for hospice services.

<b>SEVERITY LEVEL B VIOLATIONS</b> <b>\$500 - \$1,000 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.403(w)(1)(A)-(B) separate penalties	Requirements for having on-site 24-hour nursing services provided by RNs and LVNs.
§97.403(w)(2)(A)-(G) separate penalties	Implementation of a written disaster preparedness and response plan for a freestanding hospice in the event of a disaster.
§97.403(w)(3)	Meeting all federal, state, and local laws, regulations, and codes pertaining to health and safety.
§97.403(w)(4)	Meeting the National Fire Protection Association Life Safety Code for fire in buildings and structures.
§97.403(w)(9)	Having available at all times a quantity of linen essential for proper care of clients and requirements to prevent the spread of infection on linens.
§97.403(w)(10)	Making provisions for isolating clients with infectious diseases.
§97.403(w)(12)(A)-(I) separate penalties	Methods and procedures for dispensing and administering medications.
§97.404(c)	Qualifications of agency staff performing personal assistance services.
§97.404(d)	Tasks authorized under a personal assistance services license category.
§97.404(g)	Enforcement of a written policy that addresses the supervision of agency personnel with input from the client or family on the frequency of supervision.
§97.404(g)(1)-(2) separate penalties	Conditions and qualifications for supervising agency personnel delivering personal assistance services.
§97.404(h)(1)-(5) separate penalties	Performance of gastrostomy tube feedings and medication administration for an agency that provides personal assistance services.
§97.405(a)	Requirements for agencies that provide peritoneal dialysis or hemodialysis services.
§97.405(c)(1)-(2) separate penalties	Qualifications and responsibilities of the medical director for an agency that provides home dialysis services.
§97.405(e)(1)(A)-(C) separate penalties	Provision and supervision of nursing services for an agency that provides home dialysis services.
§97.405(e)(2)	Provision of nutritional counseling for an agency that provides home dialysis services.
§97.405(e)(3)	Provision of medical social services for an agency that provides home dialysis services.
§97.405(f)(1)	Requirements for orientation and training of personnel providing direct care to clients receiving home dialysis services.
§97.405(f)(2)(A)-(G) separate penalties	Requirement for an orientation and skills education period for licensed nurses.
§97.405(i)	Requirement that an agency coordinate the exchange of medical and other important information when transferring a home dialysis client to a health-care facility for treatment.

<b>SEVERITY LEVEL B VIOLATIONS</b> <b>\$500 - \$1,000 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.405(k)	Requirement for routine hepatitis testing of home dialysis clients and agency employees providing dialysis care.
§97.405(k)(1)(A)-(C) separate penalties	Requirements for hepatitis B screening and vaccinations for staff.
§97.405(k)(2)(A)-(E) separate penalties	Requirements for hepatitis B screening and vaccinations for clients.
§97.405(l)	Requirements for employees providing direct care to clients to have a current CPR certification.
§97.405(m)	Requirement for initial admission assessment of a client for home dialysis services.
§97.405(n)	Requirement for development of a long-term program for a client receiving home dialysis services.
§97.405(o)	Requirement that the agency conducts a history and physical of a home dialysis client at admission and annually.
§97.405(p)(1)-(2) separate penalties	Requirement for physician orders for home self-assisted dialysis treatment.
§97.405(q)(1)-(7) separate penalties	Requirements for development and implementation of a care plan for a home dialysis client.
§97.405(r)	Requirement for medication administration by licensed personnel for an agency that provides home dialysis services.
§97.405(s)(2)-(3) separate penalties	Additional requirements for maintaining client records in an agency that provides home dialysis services.
§97.405(t)(1)-(4) separate penalties	Requirements for use of water in the home dialysis setting.
§97.405(u)	Adoption and enforcement of a policy to test dialysis equipment prior to each treatment.
§97.405(v)	Enforcing the agency's written preventive maintenance program for home dialysis equipment.
§97.405(v)(1), (1)(A), (1)(C)-(D), and (2) separate penalties	Implementing requirements for a written preventive maintenance program for home dialysis equipment.
§97.405(w)(1)-(6) separate penalties	Reuse of disposable medical devices in the home dialysis setting.
§97.405(x)(1)-(2)	Provision of laboratory services.
§97.405(x)(3)-(4) separate penalties	Provision of laboratory services.
§97.405(y)(1)-(2) separate penalties	Supplies for home dialysis services.
§97.405(z)(1)-(7) separate penalties	Compliance with policies and procedures for medical emergencies and emergencies resulting from a disaster required of an agency that provides home dialysis services.
§97.406(2)-(5) separate penalties	Provision of psychoactive services.

<b>SEVERITY LEVEL B VIOLATIONS</b> <b>\$500 - \$1,000 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.407(1)-(11) separate penalties	Provision of intravenous therapy services.
§97.523(e)	Requirement to grant the surveyor entry to the agency if closed when the surveyor arrives during regular business hours.
§97.701(a)-(f)(1)-(7) separate penalties	Home health aides.

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of March 10, 2011, through March 16, 2011. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Coastal Coordination Council website. The notice was published on the website on March 24, 2011. The public comment period for this project will close at 5:00 p.m. on April 22, 2011.

#### FEDERAL AGENCY ACTIONS:

**Applicant: Texas Parks and Wildlife Department;** Location: The project site is located in the Gulf of Mexico, at the Outer Continental Shelf Block Mustang Island (State Tract) 775, approximately 10.6 miles east of Packery Channel in the Corpus Christi area, Nueces County, Texas, in 73 feet of water. The project site can be located on the U.S.G.S. 1:100,000 scale map titled: CORPUS CHRISTI, Texas. The center point's approximate UTM Coordinates in NAD 83 (meters): Zone 14; Easting: 696,576; Northing: 3,059,620. Project Description: The applicant proposes to create an artificial reef in the Gulf of Mexico, in State Tract 775. Concrete culverts and other forms of concrete of approximately 1 ton in size, obsolete oil and gas production structure legs, obsolete or surplus vessels and other approved artificial reef materials will be placed within the confines of a designated 2,640-foot by 2,640-foot area. A minimum clearance of 50 feet, at mean low water, will be maintained above each structure. All activity associated with placement of artificial reef materials will be done in a manner as not to interfere with current and future lease holders. All floatable materials will be removed prior to placement. All tanks, compartments and enclosures will be cleaned to EPA standards prior to placement. CMP Project No.: 11-0217-F1. Type of Application: U.S.A.C.E. permit application #SWG-2010-01047 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Kate Zultner, Consistency Review Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or via email at [kate.zultner@glo.texas.gov](mailto:kate.zultner@glo.texas.gov). Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201101140

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: March 22, 2011

## Comptroller of Public Accounts

### Certification of the Average Taxable Price of Gas and Oil - February 2011

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period February 2011, as required by Tax Code, §202.058, is \$70.26 per barrel for the three-month period beginning on November 1, 2010, and ending January 31, 2011. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of February 2011, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period February 2011, as required by Tax Code, §201.059, is \$3.35 per mcf for the three-month period beginning on November 1, 2010, and ending January 31, 2011. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of February 2011, from a qualified Low-Producing Well, is eligible for 25% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of February 2011, is \$89.74 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of February 2011, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of February 2011, is \$4.04 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of February 2011, from a qualified low-producing gas well.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

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**Notice of Loan Fund Availability and Request for Applications**

Pursuant to: (1) the LoanSTAR Revolving Loan Program of the Texas State Energy Plan (SEP) in accordance with the Energy Policy and Conservation Act (42 U.S.C. 6321, et seq.) as amended by the Energy Conservation and Production Act (42 U.S.C. 6326, et seq.); (2) the Oil Overcharge Restitutionary Act, Chapter 2305, Texas Government Code; and (3) Title 34, Texas Administrative Code, Chapter 19, Subchapter D Loan Program for Energy Retrofits; the Comptroller of Public Accounts (Comptroller) and the State Energy Conservation Office (SECO) announces its Notice of Loan Fund Availability (NOLFA) and Request for Applications (RFA #BE-G3-2011) and invites applications from eligible interested governmental entities for loan assistance to perform building energy efficiency and retrofit activities.

**Program Summary:** The Texas LoanSTAR (Saving Taxes and Resources) Program, not part of the federally financed stimulus program, finances energy-related cost-reduction retrofits for state, public school district (excluding charter schools), public college, public university, and tax district supported nonprofit hospital facilities. Low interest rate loans are provided to assist those institutions in financing their energy-related cost-reduction efforts. The program's revolving loan mechanism allows applicants to repay loans through the stream of energy cost savings realized from the projects.

Utility dollar savings are the number one criterion for determination if the measure can be considered an eligible Energy Cost Reduction Measure (ECRM) or Utility Cost Reduction Measure (UCRM); therefore, ECRMs/UCRMs are not limited to those activities that save units of energy. An ECRM/UCRM could conceivably call for actions that save no energy or consume additional BTUs, but save utility budget dollars. Before entering into a LoanSTAR loan agreement, applicants, if selected, are required to submit an Energy Assessment Report (EAR) for Design-Bid-Build and Design-Build Projects, or a Utility Assessment Report (UAR) for Energy Savings Performance Contracts, or a Systems Commissioning Report in the case where a commissioning project meets LoanSTAR payback requirements. A Professional Engineer licensed in the State of Texas must evaluate and analyze all LoanSTAR projects. The prospective applicant selects the Engineer.

The Engineer will submit the details of the analysis in the form of an EAR for Design-Bid-Build and Design-Build Projects, or a UAR for Energy Savings Performance Contracts. The EAR is prepared in accordance with the LoanSTAR Technical Guidelines ([http://www.seco.cpa.state.tx.us/ls/ls\\_guideline.php](http://www.seco.cpa.state.tx.us/ls/ls_guideline.php)) prescribed format. An UAR is prepared in accordance with the SECO Performance Contracting Guidelines ([http://www.seco.cpa.state.tx.us/sa\\_pc.htm](http://www.seco.cpa.state.tx.us/sa_pc.htm)) prescribed format. There is not a prescribed format for Systems Commissioning Reports. SECO must approve project descriptions and calculations contained within the EAR, the UAR, and the Systems Commissioning Reports before authorizing project financing. SECO must approve project designs for Design-Bid-Build and Design-Build projects before construction can commence. Monitoring during the construction phase and at project completion will take place on Design-Bid-Build and Design-Build projects, Energy Savings Performance Contract projects, and on Commissioning projects.

The applicant should monitor post-retrofit energy savings in Design-Bid-Build projects, Design-Build projects, and Commissioning

projects to ensure that energy cost savings are being realized. The level of monitoring may range from utility bill analysis to individual system or whole-building metering, depending on the size and types of retrofits installed.

SECO must approve applicant's measurement and verification plan for energy savings performance contracts. Post construction measurement and verification costs must be included as part of the total project cost. Additional LoanSTAR funds can be borrowed for metering of large, complex retrofits and for systems commissioning to maximize the probability of achieving, or exceeding the calculated savings - provided the maximum allowable loan amount is not exceeded in the process of adding these measures to the loan.

**Loan Background:** If awarded under the terms of this NOLFA/RFA, projects financed by LoanSTAR must have a composite simple payback of ten years or less. In addition, ECRM and UCRM must have a simple payback that does not exceed the estimated useful life of the ECRM or UCRM. Applicants are encouraged to consider renewable energy technologies when evaluating ECRMs and UCRMs.

Approximately \$33,000,000 in LoanSTAR funds may be available in the form of the building efficiency and retrofit revolving loan funds. The anticipated maximum loan size is \$5,000,000. SECO may make more than one award of a loan with this NOLFA/RFA announcement. The loan interest rate for this NOLFA/RFA announcement is 3% fixed. The loan term will be equal to the composite simple payback term for the energy efficiency measures, and must be ten years or less. Applicants have the option of buying down specific ECRMs and UCRMs so that paybacks can meet both the individual and composite loan term limits.

**Contact:** Parties interested in submitting an application should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673. This NOLFA and RFA will be available on April 1, 2011, after 10:00 a.m. Central Standard Time (CT) and during normal business hours thereafter. The Comptroller will make the application, instructions, and a sample loan agreement and attachments available electronically on the SECO website at: <http://www.seco.cpa.state.tx.us/funding/> after 10:00 a.m. CT on April 1, 2011.

**Questions and Non-Mandatory Letters of Intent:** All written inquiries, questions, and Non-mandatory Letters of Intent must be received at the above-referenced address not later than 2:00 p.m. (CT) on April 8, 2011. Prospective applicants are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. Non-mandatory Letters of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and be signed by an official, such as a CEO or CFO, of the entity. On or about April 15, 2011, or as soon thereafter as practical, the Comptroller expects to post responses to the questions received by the deadline on the website referenced above. Late Non-mandatory Letters of Intent and Questions will not be considered under any circumstances. Applicants shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

**Closing Date:** Applications must be delivered in the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. (CT), on May 16, 2011. Late Applications will not be considered under any circumstances. Applicants shall be solely responsible for verifying time receipt of applications in the Issuing Office.

**Application Requirements and Eligibility:** Eligible entities may apply to the LoanSTAR revolving loan program, administered by the Texas Comptroller of Public Accounts (CPA), State Energy Conservation Office (SECO). Applicants must meet eligibility requirements.

As part of the application process, applicants shall submit one of the following documents:

1. Project Assessment Commitment for design-bid-build and design build projects, for energy savings performance contracts, or for commissioning projects. The Project Assessment Commitment shall be signed by the applicant's Chief Financial Officer or equivalent.
2. Preliminary Energy Assessment (PEA) for both design-bid-build and design-build projects, energy savings performance contracts, and commissioning projects. The PEA must be completed by a Professional Engineer licensed in the State of Texas. PEAs must include ECRMs or UCRMs that will be completed to reduce utility (energy and water) costs. Project costs and simple paybacks must also be documented for each ECRM and UCRM in the PEA.
3. EAR for design-bid-build and design-build projects,
4. UAR for energy savings performance contracts, or
5. Commissioning Report for commissioning projects.

A Loan Application must be submitted to SECO for review and approval.

While the Project Assessment Commitment and the PEA will qualify the project for potential funding, an approved EAR, UAR or commissioning report will be required prior to execution of a loan agreement.

The SECO technical staff or its contractor will review the Project Assessment Commitment, PEA, EAR, UAR, or commissioning report. A detailed project budget must be included in each EAR, UAR, or commissioning report. The project budget should include, at a minimum, the following Cost Categories: Labor, materials (including equipment), and overhead and profit. The technical staff may request the report author (engineer) to provide additional information or calculations.

SECO will establish an Evaluation Committee for the full review and evaluation of eligible applications. The Evaluation Committee shall include employees of the Comptroller and may include other impartial individuals who are non-Comptroller employees.

SECO's legal counsel will review the applications for eligibility, compliance with the terms of this NOLFA/RFA, and thoroughness. The applications that meet minimum qualifications and meet eligibility requirements shall be distributed to the members of the Evaluation Committee for their independent review and evaluation. Evaluation criteria and relative weight for each NOLFA/RFA may vary.

The Evaluation Committee shall review and individually score each written application. The Evaluation Committee shall then have the option of selecting the top scoring applications and may, but is not required to, call the top scoring Applicants to come to SECO offices in Austin, Texas for an interview. At the interviews, the Evaluation Committee may ask the Applicants a series of questions to clarify responses to the application questions. The Evaluation Committee can, in its sole discretion, proceed directly to scoring and selection without the necessity of any oral interviews.

Upon the selection of the apparent Successful Applicant(s), if any, and after submission of a Project Assessment Commitment or PEA, the Applicant shall be notified they have 75 calendar days to complete and submit an EAR, UAR or commissioning report. When this report is completed, the SECO technical staff or its contractor will review the EAR, UAR, or commissioning report. The technical staff may request the engineering firm to provide additional information or calculations. If the report is not submitted within the time constraints, SECO may, in its sole discretion, choose to withdraw the loan offer.

SECO shall negotiate a Loan Agreement with the apparent Successful Applicants after the EAR, UAR, or commissioning report has been

reviewed and approved. If a Loan Agreement cannot be successfully negotiated within a reasonable period of time, negotiations will be terminated, and negotiations with the next highest ranking Applicant may commence. The process may continue until one or more Loan Agreements are signed or the loan offer is withdrawn. SECO may at any time, upon failure of negotiations, choose to reissue or withdraw the loan offer rather than continue with negotiations.

If SECO decides, in its sole discretion, to award more than one loan, SECO may proceed with negotiations in the above-described manner with more than one Applicant simultaneously.

Once projects have been selected, either a Memorandum of Understanding (MOU) will be issued and executed or a Loan Agreement is issued and executed. The MOU will be issued if the selected borrower included a Project Assessment Commitment or PEA submittal. The Applicant's CFO will sign and insert dates on this MOU, which certifies that the Applicant retained a Professional Engineer to prepare an EAR, UAR or Commissioning Report. The EAR shall be prepared in accordance with the guidelines and formats provided in the Texas LoanSTAR Program Guidebook: Guidelines, Formats, Program Requirements and Documents. The UAR shall be prepared in accordance with the SECO Performance Contracting Guidelines. The Applicant's CFO will also certify that copies of the completed reports will be delivered to the State Energy Conservation Office for review within the required submittal date. The sole purpose of the MOU is to reserve LoanSTAR funds for an Applicant during the period that their EAR, UAR, or Commissioning Report is being prepared. This document should not be construed as a loan agreement and does not authorize the expenditure of funds for LoanSTAR projects. LoanSTAR project expenditures cannot be incurred before the effective date cited in a fully executed loan agreement unless those expenditures are approved in the LoanSTAR Technical Guidelines.

**Applicant Design-Bid Build Design and Review Process:** After a Loan Agreement has been executed, the Applicant can begin the process of designing and implementing the projects identified in the report. A design-bid-build and design-build process includes two milestones.

1. Selecting a design Engineer. The Engineer selected to design the projects can be the Engineer who prepared the Energy Assessment Report; however, the Applicant must follow competitive procedures, based upon qualifications, to select the Engineer.

2. Preparing the design documents. The Applicant must submit Design Development Reports and Detailed Design Reports (Volume I, Appendix L of the LoanSTAR Technical Guidelines) to SECO for technical review and approval. The SECO Technical Review will ensure that the design specifications match the projects identified in the report.

- i. Design Development Report (50%) - This design review report will be completed when the design process is approximately 50% complete and will verify that the design is proceeding in a direction which conforms with the approved EAR.

- ii. Detailed Design Review Report (100%) - This design review report will verify that the completed design conforms to the intent of the approved energy assessment. In addition, it will evaluate the proposed schedule and estimated project construction budget provided by the design engineer.

The Applicant agrees that bidding and construction activities will not begin until after Applicant received SECO approval that the submitted designs conform to LoanSTAR Technical Guidelines. Applicants agree to competitively select contractors or bidders as required by state law.

**Applicant Energy Savings Performance Contracting Design Review Process:** There is no design review process for energy savings perfor-



mance contracts unless a system commissioning is a component of that program.

**Applicant Systems Commissioning Review Process:** Systems commissioning may be part of a design-bid-build and design-build project, an energy savings performance contract or a stand-alone activity. To be considered as an ECRM/UCRM or a stand-alone activity, the Systems Commissioning Report must be reviewed and approved by SECO prior to loan execution. Commissioning activities typically include surveying, interviewing, baseline measurements and analyses, definition of problems, definition of solutions, implementation of solutions, balancing, and verification measurements. Some of these steps may be repeated as necessary to optimize systems operations. In some cases system considerations extend beyond just the equipment installed under the LoanSTAR ECRMs. This is to insure that total building system effects are comprehended and optimized. Since both heating and cooling systems are usually involved in this process, optimization activities may extend over a six-month period or longer. Documentation of findings and corrections, along with recommended operating procedures should be provided by the commissioning organization.

Applicant agrees to notify SECO when the project reaches 50% completion. SECO will then perform a construction monitoring visit to ensure the project complies with the LoanSTAR Technical Guidelines or SECO Performance Contracting Guidelines. After the construction monitoring visit, SECO will provide the Applicant with a copy of the On-Site Construction Monitoring Report. This report will provide a general overview of construction site activities and will address issues of budget, schedule, and conformance of the work with the design documents and will make recommendations concerning any necessary changes in scope or budget.

Applicant agrees to notify SECO when the project reaches 100% completion. SECO will then perform a construction monitoring visit to ensure the completed project complies with the LoanSTAR Technical Guidelines or SECO Performance Contracting Guidelines. After the construction monitoring visit, SECO will provide the Applicant with a copy of the Final Monitoring Report. This report will be similar to the On-Site Construction Monitoring Report. In addition, it will focus on compliance by the construction contractor with the "close-out" documentation requirements outlined in the bid documents. The report will verify that guarantees, warranties, releases, O&M manuals, training sessions required, etc. have been provided by the contractor. Applicant shall then certify with a written letter that materials and equipment to be replaced have been properly disposed. These materials would include, but not be limited to, light bulbs, ballasts, switches, controls, HVAC equipment, refrigerants, pumps, fans, blowers, piping, valves, conduit, wiring, and boilers. Certification shall include proper disposal of hazardous materials. All waste disposals must be conducted in compliance with local, State of Texas, and federal rules and regulations. Upon completion of the project and acceptance by SECO, the Applicant will submit a Final Completion Report to SECO (LoanSTAR Technical Guidelines) and a final voucher request.

**Applicant Repayment Process:** After submittal of the Final Completion Report to SECO and the final voucher request, Applicant will request a Loan Repayment Schedule from SECO. SECO will then forward the Loan Repayment Schedule to the Applicant based on the incurred loan amount.

Loan repayments will begin within sixty days of project completion. Payments are due quarterly. The amount of annual loan repayment is based on the energy cost savings projected in the EAR, UAR or Commissioning Report. These projected savings are the basis for the loan. The dollar amount and the number of loan payments are established in the promissory note. The payments do not vary according to the actual energy savings. Payments established in the promissory note are due

regardless of whether the Applicant has achieved that level of energy savings. The applicant payback term will be equal to the EAR, UAR, or Commissioning Report loan composite payback findings.

**Application Summary:** Applications must be complete, be submitted under a signed transmittal letter, include an executive summary, a table of contents, describe the project and personnel qualifications relevant to the evaluation criteria, and must meet the following program requirements:

- \* The maximum loan amount shall not exceed \$5 million.
- \* The interest rate is set at 3%.
- \* The term of the loan is equal to the composite simple payback term for the energy efficiency measures, which must be 10 years or less. The individual ECRM/UCRM must demonstrate a simple payback of less than the ECRM's/UCRM's estimated useful life.
- \* Project expenses will be reimbursed on a "cost reimbursement" basis. No advance of funds is allowed.
- \* Borrower will be required to comply with federal Solid Waste Disposal Act, and, if applicable, National Environmental Policy Act, and National Historic Preservation Act. Applicants will ensure that the State Historical Preservation Office (SHPO) is consulted in any project award that may include a building or site of historical importance. In this regard, SHPO guidance will be solicited and followed to ensure that the historical significance of the building will be preserved. All requirements are set out in the sample contract.
- \* SECO will conduct periodic on-site monitoring visits on all building retrofit projects.
- \* All improvements financed through the LoanSTAR Revolving Loan Program shall meet minimum efficiency standards (as prescribed by applicable building energy codes). Examples of projects that are acceptable may include:
  - Building and mechanical system commissioning and optimization
  - Energy management systems and equipment control automation
  - High efficiency heating, ventilation and air conditioning systems, boilers, heat pumps and other heating and air conditioning projects
  - High efficiency lighting fixtures and lamps
  - Building Shell Improvements (insulation, adding reflective window film, radiant barriers, and cool roof.)
  - Load Management Projects
  - Energy Recovery Systems
  - Low flow plumbing fixtures, high efficiency pumps
  - Systems commissioning
  - Renewable energy efficiency projects are strongly encouraged wherever feasible, and may include installation of distributed technology such as rooftop solar water and space heating systems, geothermal heat pumps (only closed loop systems with no greater than 10 ton capacity), or electric generation with photovoltaic or small wind and solar-thermal systems. If there are closed-loop geothermal heat pumps greater than 10 ton capacity involved, then Applicants will be responsible for further National Environmental Policy Act (NEPA) review by DOE in the event of an award. If renewable generation greater than 20 KW is involved, Applicants will be responsible for further NEPA review by DOE.

**Evaluation Criteria:** Applications will be evaluated under the general criteria outlined below. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all ap-

plications submitted. The Comptroller is not obligated to execute a loan agreement on the basis of this NOLFA/RFA. The Comptroller shall not pay for any costs incurred by any entity in responding to this NOLFA/RFA. Comptroller and SECO may request additional information at any time if deemed necessary for further evaluation. General evaluation criteria are as follows and as set forth in the application instructions:

1. Which of the following reports are submitted with this application? (Maximum 30 points)

\* Energy Assessment Report (EAR) for design-bid-build projects - 30 points

\* Utility Assessment Report (UAR) for Energy Savings Performance Contracts - 30 points

\* Commissioning Report - 30 points

\* Preliminary Energy Assessment (PEA) - 25 points

\* Project Assessment Commitment

- 3 or more ECRMs/UCRMs - 15 points

- 2 ECRMs/UCRMs - 13 points

- 1 ECRM/UCRM - 10 points

\* If no report is submitted, do not proceed. Project is disqualified from further loan consideration.

2. If the project is an Energy Savings Performance Contract (ESPC) which requires the submittal of a UAR (see question 1), is a Measurement and Verification (M+V) Plan submitted with this application? (0 points)

\* If yes, write "OK" in column and continue with evaluation.

\* If no, do not proceed. Project is disqualified from further loan consideration.

3. If the project is an Energy Savings Performance Contract (ESPC), has the applicant stated that the M+V complies with International Performance Measurement and Verification Protocol (IPMVP)? (0 points)

\* If yes, write "OK" in column and continue with evaluation.

\* If no, do not proceed. Project is disqualified from further loan consideration.

4. This question relates only to applicants that are submitting Project Assessment Commitments or PEAs. Has the applicant stated they agree to complete and submit the EAR/UAR within 75 days after contract commitment? (0 points)

\* If yes, write "OK" in column and continue with evaluation.

\* If no, do not proceed. Project is disqualified from further loan consideration.

5. Has the applicant stated they agree to the terms and conditions of the sample contract? (0 points)

\* If yes, write "OK" in column and continue with evaluation.

\* If no, do not proceed. Project is disqualified from further loan consideration. (0 points)

6. Is the composite simple payback for the project Energy Cost Reduction Measures (ECRMs)/Utility Cost Reduction Measures (UCRMs) less than 10 years? (0 points)

\* If yes, write "OK" in column and continue with evaluation.

\* If no, do not proceed. Project is disqualified from further loan consideration.

7. Is the simple payback for each ECRM/UCRM less than the Estimated Useful Life (EUL) of that measure? (0 points)

\* If yes, write "OK" in column and continue with evaluation.

\* If no, do not proceed. Project is disqualified from further loan consideration.

8. How many ECRMs/UCRMs are included in the project? (Note, the ECRMs/UCRMs are by category (lighting, HVAC, controls, etc.) and not by location (Building 1 lighting, Building 2 lighting, etc.) (Maximum 15 points)

\* 3 or more ECRMs/UCRMs - 15 points

\* 2 Energy ECRMs/UCRMs - 13 points

\* 1 Energy ECRM/UCRM - 10 points

9. Does the project retrofit incorporate renewable technologies? (Maximum 5 points)

\* Yes - 5 points

\* No - 0 points

10. Does the applicant's team have Professional Engineers (PE) in the State of Texas that have demonstrated work experience on the design of similar projects? (Maximum 15 points)

\* If yes, what is the PE's average design experience in years? (Note - This number is calculated by adding together the design experience, in years, for each PE and then dividing the total number of years by the number of PEs. Each PE's experience shall not exceed 10 years on similar projects and each PE is required to list example projects that document their similar design experience in order to earn point credit)

- 8 or more years on similar projects - 15 points

- 4 years similar projects - 10 points

- 1 year on similar project - 5 points

\* If no, then 0 points will be credited for this response.

11. Does the applicant's team have other team members that have demonstrated work experience on the planning and construction of similar projects? (Maximum 15 points)

\* If yes, what is the average number of projects for each team member? (Note, this number is calculated by adding together the number of projects for each team member and then dividing the total number of projects by the number of team members. Each team member's experience shall not exceed 6 similar projects and team members are required to list example projects that document their similar work experience in order to earn point credit)

- 3 or more similar projects - 15 points

- 2 similar projects - 10 points

- 1 similar project - 5 points

\* If no, then 0 points will be credited for this response.

12. What is the name of the county and the county population? (Maximum 15 points) (<http://quickfacts.census.gov/qfd/states/480001k.html>) where project retrofit activities will take place?

County Name: \_\_\_\_\_ County Population: \_\_\_\_\_

\* County population less than 10,000 - 15 points

\* County population between 10,001 to 100,000 - 10 points

\* County population greater than 100,000 - 5 points

13. Will the energy savings information, updated monthly, be available for public viewing? (Maximum 5 points)

\* If yes, how will the applicant make this information available for public viewing

- Via an internet portal - 5 points

- Via detailed signage at the facility entrance - 2 points

\* If no, than 0 points will be credited for this response.

The anticipated schedule of events pertaining to this RFA is as follows: Issuance of RFA - April 1, 2011, after 10:00 a.m. CT; Non-Mandatory Letters of Intent and Questions Due - April 8, 2011, 2:00 p.m. CT; Official Responses to Questions posted - April 15, 2011, or as soon thereafter as practical; Applications Due - May 16, 2011, 2:00 p.m. CT; Loan Agreement Execution - as soon as practical.

TRD-201101170

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: March 23, 2011



## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/28/11 - 04/03/11 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/28/11 - 04/03/11 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 04/01/11 - 04/30/11 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 04/01/11 - 04/30/11 is 5.00% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-201101142

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: March 22, 2011



## East Texas Council of Governments

### Notice of Correction for Request for Proposals - Workforce Center Services

The East Texas Council of Governments published a Request for Proposals for the operation and management of Workforce Centers in the February 11, 2011, issue of the *Texas Register* (36 TexReg 867). The following is a corrected version of the Request for Proposals.

An announcement was published earlier this year that the East Texas Council of Governments (ETCOG), as the Administrative unit for the Workforce Solutions East Texas Board, is soliciting proposals for the

operation and management of Workforce Centers for a period beginning October 1, 2011 and extending through September 30, 2012 with the availability of four, one-year potential contract renewal options. It was announced that the Workforce Solutions East Texas Board is making approximately \$8,540,546 available through this Request for Proposals.

Two important changes to this solicitation of proposals are announced in response to uncertainty regarding Workforce Investment Act funding and state level workforce funding related to ongoing budget deliberations:

THE DUE DATE FOR THE REQUEST FOR PROPOSALS IS CHANGED FROM APRIL 15, 2011 TO 5:00 PM CENTRAL DAY-LIGHT TIME MAY 11, 2011.

PROPOSERS ARE REQUIRED TO SUBMIT AN ADDITIONAL COMPOSITE BUDGET FOR ALL OF THE PROGRAMS INCLUDED IN THE REQUEST FOR PROPOSALS REFLECTING WORKFORCE INVESTMENT ACT ALLOCATIONS WHICH HAVE BEEN REDUCED BY 25%, AND THE ELIMINATION OF FUNDING FOR THE REINTEGRATION OF OFFENDERS (RIO) PROGRAM. The supplemental budget information is requested for a contingency budget of \$7,190,454 shall be in addition to the budget being requested for the original Request for Proposals amount of \$8,540,546.

The Workforce Center Services Provider shall have the responsibility to manage all full service workforce centers and satellite offices. Full service workforce centers are located in Longview, Marshall, Palestine and Tyler. Satellite offices are located in Athens, Canton, Carthage, Emory, Gilmer, Henderson, Jacksonville, Jefferson, Pittsburg, and Quitman. The Workforce Center Services Provider shall have full responsibility for operation of the following programs: Workforce Investment Act (WIA) (Adult, Dislocated Worker and Youth); the Temporary Assistance to Needy Families (TANF) (including the Choices Program and other TANF funded activities), the Supplemental Nutrition Assistance Program (SNAP), the Employment Services (ES) Program, the Reintegration of Offenders (RIO) Program, and the Trade Adjustment Act (TAA) Program. The Workforce Solutions East Texas Board reserves the right to assign to the Workforce Center Services Provider responsibility for additional programs as new funding sources and programs come under the authority of the Board.

Proposers may be governmental units, public agencies, business organizations, labor organizations, public or private not-for-profit corporations, or private for-profit corporations organized in accordance with state and federal laws. A proposer may not be a deliverer of occupational or basic skills training in accordance with Texas House Bill 1863. A proposer who is currently a training provider but agrees to divest all training activities may apply under this proposal.

Proposers may submit a proposal under one of two options: (1) Turn Key Workforce Center Operator - The Proposer provides the management and staffing of all positions in the workforce center through one company or organization - Management and staff are employees of the proposing entity. (2) Managing Director with an Employer of Record Organization (EOR) - The proposing individual or entity may submit a proposal for the managing director function in partnership with an Employer of Record organization, to cover the staffing function for the workforce center system.

Persons or organizations wanting to receive a Request for Proposals (RFP) package, should submit a request by letter, fax, or email to the East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662, Attn: Amanda Garner (903-984-8641 Ex 247). The fax number for ETCOG is (903) 983-1440 or email [amanda.garner@etcog.org](mailto:amanda.garner@etcog.org). Questions concerning the RFP process should be addressed by email or

fax to Amanda Garner (see above) or Gary Allen, gary.allen@etcog.org or fax (903) 983-1440. Persons or organizations which have already received a Request for Proposals (RFP) package need not submit a new request. For these individuals and organizations, a memorandum communicating the changes outlined in this public notice has been transmitted.

Historically Underutilized Businesses (HUBs) are encouraged to apply. All programs and employers under the auspices of the Workforce Solutions East Texas Board are in compliance with EEO. Auxiliary aids and services are available, upon request, to individuals with disabilities.

TRD-201101144  
David Cleveland  
Executive Director  
East Texas Council of Governments  
Filed: March 22, 2011

#### Notice of Correction for Request for Qualifications - Independent Reviewers/Facilitator

The East Texas Council of Governments published a Request for Qualifications for Independent Reviewers/Facilitator in the March 11, 2011, issue of the *Texas Register* (36 TexReg 1709). The following is a corrected version of the Request for Qualifications.

The East Texas Council of Governments (ETCOG), as the administrative unit for the local Workforce Solutions East Texas Board (WSETB) herein referred to as the Board, is soliciting proposals for a total of four independent reviewers to prepare an analysis of the proposals received by the Board for management and operation of the Workforce Solutions East Texas centers. The Board is also soliciting facilitator services to be provided by one of the four independent reviewers selected. This individual will also be responsible for providing the results of the independent reviewers and assisting the Workforce Centers Committee in the process of reviewing the proposals.

This review process requires that the panel of independent reviewers be on site at a location in the ETCOG region for a period of two to four days depending upon the number of proposals and the complexity of the procurement. This group is expected to convene beginning on Tuesday, May 17, 2011. The facilitator who is selected will be expected to come for two additional days to meet with the Workforce Centers Committee on June 2, 2011 and the Workforce Solutions East Texas Board on June 9, 2011. The projected dates for the review and facilitation are subject to change.

Persons wanting to receive a Request for Qualifications (RFQ) package, should submit a request by letter, fax, or email to the East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662, Attn: Amanda Garner. The fax number for ETCOG is (903) 983-1440 or email amanda.garner@etcog.org. Questions concerning the RFQ process should be addressed by email or fax to Amanda Garner (see above) or Gary Allen, gary.allen@etcog.org or fax (903) 983-1440.

The Request for Qualifications package will not be released prior to March 2, 2011. The deadline for receipt of proposals is Thursday, April 7, 2011 at 5:00 p.m. CDT.

Historically Underutilized Businesses (HUBs) are encouraged to apply. All programs and employers under the auspices of the Workforce Solutions East Texas Board are in compliance with EEO. Auxiliary aids and services are available, upon request, to individuals with disabilities.

TRD-201101143

David Cleveland  
Executive Director  
East Texas Council of Governments  
Filed: March 22, 2011

### Education Service Center, Region 14

#### Request for Applications for the Texas Healthy Habitats Grant Program

Eligible Applicants. Service Learning Texas, a statewide initiative of Region 14 Education Service Center (ESC) in collaboration with the Texas Education Agency, is requesting applications from public schools, private nonprofit schools, and open enrollment charter schools that serve youth in grades 5-12; 501(c)(3) nonprofit organizations that work with students in grades 5-12; and state or local agencies that work with youth in grades 5-12. Applicants must involve youth in grades 5-12 as of the start of the 2011-2012 school year and must collaborate with community partners who can assist students and teachers by providing expertise and resources to meet identified needs and objectives. Applicants are required to work with staff of the Texas Parks and Wildlife Department in the grant design and with other agencies and organizations that are already working to address the issues identified in the application.

Description. The Texas Healthy Habitats grant program is a collaborative effort of Encana Oil and Gas (USA), the Texas Parks and Wildlife Department, and Service Learning Texas. The grant is designed to involve youth in grades 5-12 in efforts to improve and/or restore the natural habitat of Texas by addressing one or more of the goals of the State Wildlife Action Plan, which supports the state's conservation priorities to (1) manage landscapes and watersheds holistically, in cooperation with private landowners and the general public, to foster biodiversity of plants, fish and wildlife; (2) prevent species from becoming threatened or endangered; (3) control the spread of invasive species; (4) develop and implement strategies to prevent the introduction and spread of nuisance aquatic species; (5) generate creative ways to achieve landscape-scale habitat management; (6) educate citizens on the importance of riparian zones, habitat connectivity, wildlife corridors and other sensitive habitats; (7) promote watershed and range management practices that improve ground and surface water quality and quantity; (8) educate private landowners on the economic benefits of conservation; and (9) promote citizen participation in hands-on conservation.

Funding Guidelines. Activities funded through this grant must help young people in fifth grade, middle school, or high school research needs, develop and implement a plan, and take action to improve and/or restore the natural environment. Research shows that effective service-learning programs require sufficient duration and intensity to have an impact on participants. Therefore, this grant will support ongoing activities that are concentrated in blocks of time across a period of several weeks or months and which could be sustained in the future without grant funds. In addition, no more than 30% of the requested grant funds may be used for equipment, and any such equipment must be integral to the proposed activities. Funds may be used for substitutes, teacher stipends, supplies and materials, transportation, attendance at state conferences related to service-learning or to improving or restoring the natural environment, promotion and publicity, and other costs related to the grant activities.

Student actions may and often do evolve over time in response to varying needs of community partners, feasibility of the ideas proposed, and student interests. Such changes are allowable, along with corresponding changes in proposed expenditures, as long as the awardee continues to use service-learning to engage students in improving and restoring

the natural environment and continues to adhere to the funding guidelines.

**Dates of Project.** All services and activities related to this proposal will be conducted within specified dates. The starting date will be no earlier than August 1, 2011, with an ending date of June 30, 2012. Applicants may also request additional time to complete project activities, if necessary, through December 2012.

**Project Amount.** Grants will be awarded in amounts up to \$10,000 for project activities. Grant expenditures will be reimbursed by Region 14 ESC following submission of quarterly expenditure reports.

**Selection Criteria.** Subgrantees will be selected through a two-stage review process consisting of a pre-proposal and an application. Pre-proposals will be reviewed for consistency with the grant purpose and guidelines, and those applicants that meet the criteria will be invited to submit a full application. Grant awards will be determined on the basis of total points awarded through a competitive grant review process in which applications receiving 70% or higher of the total points will be considered for funding. Additional factors will be considered in recommending applicants for funding to ensure that projects meet the intent and purposes of the grant, are cost effective, and demonstrate greatest need. Current recipients and previous recipients of Texas Healthy Habitats grants are eligible to apply for the 2011-2012 grant provided that they met or are meeting their obligations under the grant.

Region 14 ESC is not obligated to execute a resulting grant award, provide funds, or endorse any proposal submitted in response to this RFA. This RFA does not commit Region 14 ESC to pay any costs incurred before a NOGA is executed. The issuance of this RFA does not obligate Region 14 ESC to award a grant or pay any costs incurred in preparing a response.

**Requesting the Application.** A complete copy of the RFA may be obtained by downloading the application from the Service Learning Texas website at [www.servicelearningtexas.org](http://www.servicelearningtexas.org); by writing Service Learning Texas, 2499 S. Capital of Texas Hwy., Suite A-107, Austin, TX 78746-7703; or by calling (512) 420-0214.

**Technical Assistance.** Applicants are required to participate in or watch a recording of a webinar on the grant; information on the webinar will be posted on the Service Learning Texas website. In designing a project, applicants are required to seek input from community partners with expertise in environmental issues specific to their ecoregion and/or riparian zone as discussed in the state Wildlife Action Plan. This may include staff of Texas Parks and Wildlife Department (TPWD) or other individuals with expertise on local and regional environmental issues. Instructions on contacting TPWD staff is included in the application. For additional clarifying information about the RFA, contact Service Learning Texas at (512) 420-0214 or visit [www.servicelearningtexas.org](http://www.servicelearningtexas.org).

**Deadline for Receipt of Pre-Proposals and Applications.** Pre-Proposals must be received by email by 11:59 p.m. Central Time on Thursday, April 28, 2011. Applications from those invited to submit full applications will be due by email by 11:59 p.m. Central Time on Monday, June 20, 2011.

TRD-201101171

Ronnie Kincaid

Executive Director

Education Service Center, Region 14

Filed: March 23, 2011

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**Texas Commission on Environmental Quality**

## Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 2, 2011**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 2, 2011**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Air Products LLC; DOCKET NUMBER: 2010-1945-AIR-E; IDENTIFIER: RN100222215; LOCATION: Baytown, Harris County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 Texas Administrative Code (TAC) §116.115(c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O-02172, Special Terms and Conditions (STC) Number 12 and Permit Number 35873, Special Conditions (SC) Number 8, by failing to comply with the 10 parts per million (ppm) ammonia and 65 ppm carbon monoxide concentration limits; PENALTY: \$5,450; ENFORCEMENT COORDINATOR: John Muennink, (713) 422-8970; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: AMINA CORPORATION dba Kwik Stop 2; DOCKET NUMBER: 2010-1874-PST-E; IDENTIFIER: RN102487683; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; PENALTY: \$2,300; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: ANANTNATH INVESTMENT, INC. dba Bay Area Chevron; DOCKET NUMBER: 2010-1963-PST-E; IDENTIFIER: RN101727709; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first; PENALTY: \$5,424; ENFORCEMENT COORDINATOR:

Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: B and B Water Supply Corporation; DOCKET NUMBER: 2010-1695-PWS-E; IDENTIFIER: RN101436772; LOCATION: Navarro County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; and 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide a total pressure tank capacity of 20 gallons per connection; PENALTY: \$210; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: BEN CORPORATION dba Super K Food Mart; DOCKET NUMBER: 2010-1811-PST-E; IDENTIFIER: RN102432986; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(2) and the Code, §26.3475(d), by failing to provide proper corrosion protection for the UST system; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Chapel Hill Independent School District; DOCKET NUMBER: 2010-1893-MWD-E; IDENTIFIER: RN101521557; LOCATION: Titus County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: the Code, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013821001 Interim Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6, by failing to comply with the permitted effluent limitations for total suspended solids (TSS), biochemical oxygen demand, dissolved oxygen, and pH; and 30 TAC §305.125(1) and §305.125(17) and TPDES Permit Number WQ0013821001 Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2009; PENALTY: \$17,472; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: City Market Sun City, Inc. dba City Market; DOCKET NUMBER: 2010-1970-PST-E; IDENTIFIER: RN101498913; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; 30 TAC §334.8(c)(4)(C) and (5)(B)(i), by failing to renew a delivery certificate by submitting a properly completed UST registration and self-certification form; and 30 TAC §334.8(c)(4)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: \$1,575; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2800 S. IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(8) COMPANY: City of De Kalb; DOCKET NUMBER: 2010-0348-MWD-E; IDENTIFIER: RN101918936; LOCATION: Bowie County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TPDES Permit Number WQ0010062002, Effluent Limitations and Monitoring Requirements Number 1, 30 TAC §305.125(1), and the Code, §26.121(a), by failing to comply with permitted effluent limits for five-day carbonaceous biochemical oxygen demand, ammonia nitrogen (NH<sub>3</sub>-N), flow, and TSS; and 30 TAC §305.125(17) and §319.1 and TPDES Permit Number WQ0010062002 Monitoring

and Reporting Requirements Number 1, by failing to submit effluent monitoring results at the intervals specified in the permit; PENALTY: \$20,960; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: City of Duncanville; DOCKET NUMBER: 2011-0119-WQ-E; IDENTIFIER: RN103049771; LOCATION: Duncanville, Dallas County; TYPE OF FACILITY: collection system; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: City of Leonard; DOCKET NUMBER: 2010-1900-MWD-E; IDENTIFIER: RN101919322; LOCATION: Fannin County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TPDES Permit Number WQ0010920001, Effluent Limitations and Monitoring Requirements Number 1, 30 TAC §305.125(1), and the Code, §26.121(a), by failing to comply with permitted effluent limits for NH<sub>3</sub>-N and TSS; PENALTY: \$2,470; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: City of Tenaha; DOCKET NUMBER: 2010-2049-MWD-E; IDENTIFIER: RN102844560; LOCATION: Shelby County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (9)(A) and TPDES Number WQ0010818001, Monitoring and Reporting Requirements Number 7.c., by failing to submit noncompliance notifications for effluent violations which deviate from the permitted effluent limitation by more than 40%; 30 TAC §305.125(17) and TPDES Number WQ0010818001, Sludge Provisions, by failing to timely submit the annual sludge report to the TCEQ regional office for the period ending July 31, 2010; 30 TAC §317.7(e), by failing to completely fence the facility; 30 TAC §319.7(a)(1) and TPDES Number WQ0010818001, Monitoring and Reporting Requirements Numbers 1 and 3.c.i., by failing to maintain records of the time each sample was collected; 30 TAC §305.125(5) and §317.4(b)(4) and TPDES Number WQ0010818001, Operational Requirements Number 1, by failing to properly operate and maintain the facility and all of its systems of treatment and collection; 30 TAC §305.125(5), 317.3(a) and (e)(5), and 317.7(e) and TPDES Number WQ0010818001, Operational Requirements Number 1, by failing to properly operate and maintain the facility and all of its systems of treatment and collection; and 30 TAC §305.125(5) and TPDES Number WQ0010818001, Operational Requirements Number 1, by failing to properly operate and maintain the facility and all of its systems of treatment and collection; PENALTY: \$9,806; Supplemental Environmental Project (SEP) offset amount of \$7,845 applied to Texas Association of Resource Conservation and Development Areas, Incorporated (RC&D) - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(12) COMPANY: Darrell Hall dba 2620 Estates; DOCKET NUMBER: 2010-1149-PWS-E; IDENTIFIER: RN103018818; LOCATION: Grimes County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to operate the disinfection equipment to continuously maintain a disinfectant residual of 0.2 milligrams per liter (mg/L) of free chlorine throughout the distribution system at all times; 30 TAC §290.118(b), by failing to comply with the maximum secondary constituent level for iron and manganese; 30 TAC §290.46(f)(2) and (3)(B)(iii), by failing

to keep on file and make available for review an up-to-date record of water works operation and maintenance activities for operator review and reference; 30 TAC §290.39(e)(1), THSC, §341.035(c), and TCEQ Agreed Order, Docket Number 2008-0834-PWS-E, Ordering Provision Number 2.b., by failing to submit detailed engineering reports prior to activating a new PWS system; 30 TAC §290.46(r), by failing to maintain a minimum pressure of 35 pounds per square inch throughout the distribution system at all times; PENALTY: \$1,497; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: DONNA GOTTWALD, D.D.S., P.C.; DOCKET NUMBER: 2010-1926-EAQ-E; IDENTIFIER: RN102838026; LOCATION: Helotes, Bexar County; TYPE OF FACILITY: commercial rental property; RULE VIOLATED: 30 TAC §213.4(a)(1) and (j)(1) and Water Pollution Abatement Plan (WPAP) 13-99010401 Standard Conditions Number 2, by failing to obtain approval for a modification of a WPAP prior to initiating physical and operational modifications to a water pollution abatement structure; PENALTY: \$5,100; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: GOOD BY MARKETING COMPANY dba Pakco #3; DOCKET NUMBER: 2010-1860-PST-E; IDENTIFIER: RN102393154; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system (VRS); 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II VRS and each current employee receives in-house Stage II vapor recovery training; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification; 30 TAC §115.246(5) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; and 30 TAC §115.242(3)(M) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; PENALTY: \$6,112; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: Hartmut F. Mueller dba Hofbrau Park; DOCKET NUMBER: 2010-1933-PWS-E; IDENTIFIER: RN105502793; LOCATION: Round Mountain, Blanco County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.109(f)(3) and §290.122(b)(2)(B) and THSC, §341.031(a), by failing to comply with the maximum contaminant level (MCL) for total coliform for the months of August and September 2009 and by failing to provide public notification of the MCL exceedance for the month of August 2009; and 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing to collect at least five routine distribution coliform samples the month following a total coliform-positive sample result and by failing to provide public notification of the failure to sample; PENALTY: \$1,410; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3672; REGIONAL OFFICE: 2800 S IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(16) COMPANY: Heldenfels Enterprises, Incorporated; DOCKET NUMBER: 2010-1924-IWD-E; IDENTIFIER: RN102828258; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: the Code, §26.121(a)(1), 30 TAC §305.125(1), and General Permit Number TXG110665, Part III Permit Requirements Section A, by failing to comply with permitted effluent limits for TSS, pH, and oil and grease; and 30 TAC §305.125(11) and §319.5 and General Permit Number TXG110665, Part IV Standard Permit Conditions 7(a), by failing to collect samples at the intervals specified in the permit; PENALTY: \$6,570; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5890; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(17) COMPANY: HOSKINS ELECTRIC COMPANY; DOCKET NUMBER: 2011-0035-PST-E; IDENTIFIER: RN101490175; LOCATION: Austin, Travis County; TYPE OF FACILITY: electric company with fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide proper release detection for the piping associated with the UST system; PENALTY: \$3,354; ENFORCEMENT COORDINATOR: Cara Windle, (512) 239-2581; REGIONAL OFFICE: 2800 S IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(18) COMPANY: Monarch Utilities I Limited Partnership; DOCKET NUMBER: 2010-1997-PWS-E; IDENTIFIER: RN101379832; LOCATION: Granbury, Hood County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.45(b)(1)(B)(i) and THSC, §341.0315(a)(1), by failing to provide a well capacity of 0.6 gallons per minute per connection; PENALTY: \$262; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: PLACE PROPERTIES DEVELOPMENT SERVICES, LLC; DOCKET NUMBER: 2010-1278-EAQ-E; IDENTIFIER: RN105724892; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: multi-family residential construction site; RULE VIOLATED: 30 TAC §213.4(a)(1) and (j) and WPAP Number 13-09043001, SC Number 6, by failing to obtain approval of a modification of an Edwards Aquifer WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; 30 TAC §213.4(g)(3) and WPAP Number 13-09043001, SC Number 4, by failing to submit proof of deed recordation to the regional office within 60 days after receiving written approval of an Edwards Aquifer protection plan; and 30 TAC §213.5(f)(1) and WPAP Number 13-09043001, SC Number 7, by failing to submit written notification of intent to commence construction to the regional office no later than 48 hours prior to commencement of regulated activity; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: Sonnyreena Corporation dba RK Mart; DOCKET NUMBER: 2010-1646-PST-E; IDENTIFIER: RN102957636; LOCATION: Greenville, Hunt County; TYPE OF FACILITY: convenience store with the retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month;

PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: The Lubrizol Corporation; DOCKET NUMBER: 2010-2043-AIR-E; IDENTIFIER: RN100221589; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Air Permit Number 22048, SC Number 9E, FOP Number O-02191, STC Number 5, and THSC, §382.085(b), by failing to submit stack test results for the Anglamol Unit Thermal Oxidizer and Scrubber, Emission Point Number (EPN) FI-07, within the required 60 days; and 30 TAC §116.115(c) and §122.143(4), Air Permit Number 22048, SC Numbers 7, 8, and 9C, FOP Number O-02191, STC Number 5, and THSC, §382.085(b), by failing to demonstrate initial compliance for the destruction of hydrogen sulfide, volatile organic compounds and sulfur dioxide in the Anglamol Unit Thermal Oxidizer and Scrubber, EPN FI-07, by the required deadline; PENALTY: \$17,450; SEP offset amount of \$6,980 applied to RC&D - Clean School Buses; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: TRINITY OAKS S.A., Limited; DOCKET NUMBER: 2010-1839-EAQ-E; IDENTIFIER: RN103782744; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: residential development site; RULE VIOLATED: 30 TAC §213.4(a) and (j) and Edward Aquifer Protection Plan (EAPP) Number 13-03071702, SC Number 4, by failing to obtain approval of an EAPP prior to conducting regulated activities; PENALTY: \$17,500; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(23) COMPANY: U.S. REALTY HOLDINGS, Limited dba ASA Seminary; DOCKET NUMBER: 2010-1916-PST-E; IDENTIFIER: RN102387107; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition; 30 TAC §115.246(1), (3), and (5) and THSC, §382.085(b), by failing to maintain Stage II records at the station; and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II VRS, and each current employee received in-house Stage II vapor recovery training; PENALTY: \$2,900; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: United States Department of the Navy; DOCKET NUMBER: 2010-1595-IHW-E; IDENTIFIER: RN101131332; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: naval air station; RULE VIOLATED: 30 TAC §305.125(1) and Hazardous Waste (HW) Permit Number 50038, Permit Provisions (PP) II.A.1 and IV.B.1, by failing to comply with authorized waste storage limitations found in HW Permit Number 50038; 30 TAC §335.261(e)(4), by failing to have written approval from the executive director prior to operating a lamp crushing system; 30 TAC §305.125(1) and §335.9(a)(1), HW Permit Number 50038, PP II.B.2 and 40 Code of Federal Regulations (CFR) §264.73, by failing to maintain an operating record for the permitted container storage area; and 30 TAC §305.125(1) and HW Permit Number 50038, PP II.A.1 and V.B.1, by failing to comply with storage capacity operational requirements found in the permit; PENALTY: \$87,242; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(25) COMPANY: VAM USA, LLC; DOCKET NUMBER: 2010-1892-IWD-E; IDENTIFIER: RN102186194; LOCATION: Harris County; TYPE OF FACILITY: pipe and coupling threading and coating with an associated wastewater treatment; RULE VIOLATED: the Code, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0003420000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Numbers 001 and 003, by failing to comply with permitted effluent limits for zinc, nickel, and aluminum; and 30 TAC §305.125(1) and (17) and §319.7(d), and TPDES Permit Number WQ0003420000, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit; PENALTY: \$71,424; SEP offset amount of \$17,856 applied to Gulf Coast Waste Disposal Authority - River, Lakes, Bays, and Bayous Trash Bash; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Vistacon, Incorporated; DOCKET NUMBER: 2010-1947-WQ-E; IDENTIFIER: RN105863047; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: church construction site; RULE VIOLATED: the Code, §26.121(a), 30 TAC §281.25(a)(4), and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$2,100; ENFORCEMENT COORDINATOR: Thomas Jecha, P.G., (512) 239-2576; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(27) COMPANY: WTG Gas Processing, L.P.; DOCKET NUMBER: 2010-1796-AIR-E; IDENTIFIER: RN100211473; LOCATION: Howard County; TYPE OF FACILITY: natural gas plant; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to report emissions events within 24 hours after discovery; 30 TAC §116.115(c), THSC, §382.085(b), and New Source Review (NSR) Permit Number 20137, SC Number 1, by failing to prevent unauthorized emissions; and 30 TAC §116.115(c), THSC, §382.085(b), and NSR Permit Number 20137, SC Number 1, by failing to prevent unauthorized emissions; PENALTY: \$30,140; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (432) 570-1359.

TRD-201101147

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 22, 2011

### Enforcement Orders

An agreed order was entered regarding Phillip Crump, Docket No. 2009-0741-MSW-E on March 10, 2011 assessing \$900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dan Noyes, Docket No. 2009-1498-WOC-E on March 10, 2011 assessing \$1,992 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas



Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maria Murr, Docket No. 2009-1651-IHW-E on March 10, 2011 assessing \$33,000 in administrative penalties with \$29,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (512) 239-1877, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bucky's Navigation, Inc. d/b/a Corpus Christi Truck Stop, Docket No. 2009-1806-PST-E on March 10, 2011 assessing \$41,674 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (512) 239-1877, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2009-1944-AIR-E on March 10, 2011 assessing \$60,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunrise Materials, L.P., Docket No. 2009-2019-WQ-E on March 10, 2011 assessing \$12,299 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (512) 239-1877, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Henry M. Garza dba Cielo Azul Ranch, Docket No. 2010-0020-PWS-E on March 10, 2011 assessing \$2,096 in administrative penalties with \$419 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2010-0027-AIR-E on March 10, 2011 assessing \$6,325 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hitchcock, Docket No. 2010-0075-MWD-E on March 10, 2011 assessing \$59,075 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kevin Stockton d/b/a Nice Yards Landscaping, Docket No. 2010-0225-LII-E on March 10, 2011 assessing \$225 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Alexander, Staff Attorney at (512) 239-3503, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Annette Villegas dba Gulf Coast Environmental, Docket No. 2010-0255-SLG-E on March 10, 2011 assessing \$12,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie Frazee, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Raymond Perez, Docket No. 2010-0524-MSW-E on March 10, 2011 assessing \$9,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Stonehenge Granite of Austin, Inc., Docket No. 2010-0593-WQ-E on March 10, 2011 assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cheryl McCarey and James McCarey d/b/a The Little Store, Docket No. 2010-0613-PST-E on March 10, 2011 assessing \$16,467 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (512) 239-1877, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Star Fuels, Inc. dba Texas City Conoco, Docket No. 2010-0614-PST-E on March 10, 2011 assessing \$8,151 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy Mitchell, Staff Attorney at (512) 239-0701, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Missouri City, Docket No. 2010-0659-MWD-E on March 10, 2011 assessing \$54,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Henry's All Seasons Markets, Inc., Docket No. 2010-0765-PST-E on March 10, 2011 assessing \$10,021 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jorge Varela (aka Jorge Varela Mar and Jorge Varela-Mar) dba Magnolias Transmission, Docket No. 2010-0771-PST-E on March 10, 2011 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Fishburn, Staff Attorney at (512) 239-0635, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc., Docket No. 2010-0787-MWD-E on March 10, 2011 assessing \$86,860 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Tony Hutcheson d/b/a Elm Grove Mobile Home Park, Docket No. 2010-0791-PWS-E on March 10, 2011 assessing \$466 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E.I. du Pont de Nemours and Company, Docket No. 2010-0839-MLM-E on March 10, 2011 assessing \$43,500 in administrative penalties with \$8,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, P.G., Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Local Landscape, LLC, Docket No. 2010-0960-LII-E on March 10, 2011 assessing \$250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Circle M Bar & Grill, Inc., Inc., Docket No. 2010-1055-PWS-E on March 10, 2011 assessing \$5,973 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2010-1114-AIR-E on March 10, 2011 assessing \$20,614 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Allison Fischer, Enforcement Coordinator at (512) 239-2574, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Daniel Baugh, Docket No. 2010-1118-LII-E on March 10, 2011 assessing \$250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texmark Chemicals, Inc., Docket No. 2010-1126-AIR-E on March 10, 2011 assessing \$21,625 in administrative penalties with \$4,325 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Atchison Trucking, LLC, Docket No. 2010-1140-WQ-E on March 10, 2011 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huynh & Le Corporation, Inc., Docket No. 2010-1190-PST-E on March 10, 2011 assessing \$5,700 in administrative penalties with \$1,140 deferred.

Information concerning any aspect of this order may be obtained by contacting Marty Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HOLCIM (TEXAS) LIMITED PARTNERSHIP, Docket No. 2010-1200-IWD-E on March 10, 2011 assessing \$2,600 in administrative penalties with \$520 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Utility District No. 16, Docket No. 2010-1258-MWD-E on March 10, 2011 assessing \$6,000 in administrative penalties with \$1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding H & H Iron and Metal, Inc., Docket No. 2010-1262-MLM-E on March 10, 2011 assessing \$8,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gena Hawkins, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M J H Star Enterprises, Inc. dba Airline Food Mart, Docket No. 2010-1280-PST-E on March 10, 2011 assessing \$3,184 in administrative penalties with \$636 deferred.

Information concerning any aspect of this order may be obtained by contacting Cara Windle, Enforcement Coordinator at (512) 239-2581, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Devon Gas Services, L.P., Docket No. 2010-1284-AIR-E on March 10, 2011 assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Todd Huddleson, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Plant Process Equipment, Inc., Docket No. 2010-1291-AIR-E on March 10, 2011 assessing \$1,530 in administrative penalties with \$306 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bernard Timbers Water Supply Corporation, Docket No. 2010-1295-MWD-E on March 10, 2011 assessing \$6,580 in administrative penalties with \$1,316 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Faith West, Inc., Docket No. 2010-1297-PWS-E on March 10, 2011 assessing \$2,280 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Foty, L.L.C. dba Pick N Pay 2, Docket No. 2010-1305-PST-E on March 10, 2011 assessing \$2,537 in administrative penalties with \$507 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of San Marcos, Docket No. 2010-1316-EAQ-E on March 10, 2011 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jerry Lynn Cooper dba A Sanitech Grease Services, Docket No. 2010-1319-MSW-E on March 10, 2011 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Garrhon Enterprises, Inc. dba Shell Food Mart, Docket No. 2010-1325-PST-E on March 10, 2011 assessing \$6,655 in administrative penalties with \$1,331 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Fort Worth, Docket No. 2010-1334-AIR-E on March 10, 2011 assessing \$15,900 in administrative penalties with \$3,180 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huebner Hills Owners Association, Docket No. 2010-1338-EAQ-E on March 10, 2011 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trucker's Corner, LP, Docket No. 2010-1344-MWD-E on March 10, 2011 assessing \$6,232 in administrative penalties with \$1,246 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Joaquin, Docket No. 2010-1346-MWD-E on March 10, 2011 assessing \$3,280 in administrative penalties with \$656 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding First National Bank of Hughes Springs, Docket No. 2010-1369-IWD-E on March 10, 2011 assessing \$9,212 in administrative penalties with \$1,842 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cleereco Services, Inc. dba Menard Chevron, Docket No. 2010-1387-PST-E on March 10, 2011 assessing \$13,900 in administrative penalties with \$2,780 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rhodia Inc., Docket No. 2010-1388-AIR-E on March 10, 2011 assessing \$1,410 in administrative penalties with \$282 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 226 Corp. dba Hog Pit Pub & Grub, Docket No. 2010-1392-PWS-E on March 10, 2011 assessing \$2,141 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc., Docket No. 2010-1412-MWD-E on March 10, 2011 assessing \$10,175 in administrative penalties with \$2,035 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wesco Refractories, Inc., Docket No. 2010-1429-AIR-E on March 10, 2011 assessing \$4,200 in administrative penalties with \$840 deferred.

Information concerning any aspect of this order may be obtained by contacting Gena Hawkins, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lone Star Petroleum, LP dba Phillips 66 Gulf Freeway, Docket No. 2010-1432-PST-E on March 10, 2011 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Cara Windle, Enforcement Coordinator at (512) 239-2581, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Super Serve, Inc., Docket No. 2010-1444-PST-E on March 10, 2011 assessing \$2,117 in administrative penalties with \$423 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cerrito Gas Processing, L.L.C., Docket No. 2010-1454-AIR-E on March 10, 2011 assessing \$12,355 in administrative penalties with \$2,471 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 50's Group Properties, Ltd., Docket No. 2010-1455-IWD-E on March 10, 2011 assessing \$3,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Inverness Forest Improvement District, Docket No. 2010-1463-MWD-E on March 10, 2011 assessing \$3,440 in administrative penalties with \$688 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S.S.G. Fuel Service, Inc. dba King Shell, Docket No. 2010-1466-PST-E on March 10, 2011 assessing \$9,056 in administrative penalties with \$1,811 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sacramento Dorantes, Jr., Docket No. 2010-1469-PST-E on March 10, 2011 assessing \$3,675 in administrative penalties with \$735 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brad Archer dba Mullins Mobile Home Park, Docket No. 2010-1472-PWS-E on March 10, 2011 assessing \$180 in administrative penalties with \$36 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding H G W ENTERPRISES, INC. dba Super Stop 25, Docket No. 2010-1484-PST-E on March 10, 2011 assessing \$7,134 in administrative penalties with \$1,426 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Taylor Petroleum Companies, Inc. dba Taylor Petroleum Company #55, Docket No. 2010-1493-PST-E on March 10, 2011 assessing \$8,750 in administrative penalties with \$1,750 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brien F. Davis and Kirsten Davis, Docket No. 2010-1500-WR-E on March 10, 2011 assessing \$600 in administrative penalties with \$120 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Back Porch Bar-B-Q, Inc., Docket No. 2010-1509-PWS-E on March 10, 2011 assessing \$850 in administrative penalties with \$170 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nueces Water Supply Corporation, Docket No. 2010-1518-PWS-E on March 10, 2011 assessing \$655 in administrative penalties with \$131 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Duncanville, Docket No. 2010-1528-WQ-E on March 10, 2011 assessing \$9,160 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kevin Johnson, Docket No. 2010-1530-MSW-E on March 10, 2011 assessing \$3,030 in administrative penalties with \$606 deferred.

Information concerning any aspect of this order may be obtained by contacting Cara Windle, Enforcement Coordinator at (512) 239-2581, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PALLETIZED TRUCKING, INC., Docket No. 2010-1533-PST-E on March 10, 2011 assessing \$5,220 in administrative penalties with \$1,044 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwest Shipyard, L.P., Docket No. 2010-1536-AIR-E on March 10, 2011 assessing \$46,900 in administrative penalties with \$9,380 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E Z STOP, L.L.C. dba Aman's Food Mart 2, Docket No. 2010-1546-PST-E on March 10, 2011 assessing \$3,500 in administrative penalties with \$700 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding American Water Operations and Maintenance, Inc., Docket No. 2010-1558-WQ-E on March 10, 2011 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jimmy Don Pack and Meine Huisman dba Jimmy Don Pack Dairy, Docket No. 2010-1565-AGR-E on March 10, 2011 assessing \$2,440 in administrative penalties with \$488 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Richey Road Municipal Utility District, Docket No. 2010-1569-MWD-E on March 10, 2011 assessing \$1,397 in administrative penalties with \$279 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hamshire-Fannett Independent School District, Docket No. 2010-1572-MWD-E on March 10, 2011 assessing \$6,660 in administrative penalties with \$1,332 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Greenacres Grocery, Inc., Docket No. 2010-1597-PST-E on March 10, 2011 assessing \$2,408 in administrative penalties with \$481 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Budget Rent A Car System, Inc., Docket No. 2010-1600-PST-E on March 10, 2011 assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Ballinger, Docket No. 2010-1601-PWS-E on March 10, 2011 assessing \$343 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Avinger, Docket No. 2010-1610-PWS-E on March 10, 2011 assessing \$630 in administrative penalties with \$126 deferred.

Information concerning any aspect of this order may be obtained by contacting Kelly Wisian, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Raymond Kent McCutchen dba Kent McCutchen Exxon, Docket No. 2010-1618-PST-E on March 10, 2011 assessing \$2,003 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALBERT KHOA CORP dba Mikes Pit Stop 6, Docket No. 2010-1623-PST-E on March 10, 2011 assessing \$2,425 in administrative penalties with \$485 deferred.

Information concerning any aspect of this order may be obtained by contacting Cara Windle, Enforcement Coordinator at (512) 239-2581, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maria Valle dba Castro Texaco, Docket No. 2010-1629-PST-E on March 10, 2011 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pine Cove, Inc., Docket No. 2010-1639-MWD-E on March 10, 2011 assessing \$3,340 in administrative penalties with \$668 deferred.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (512) 239-0735, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alon USA, LP, Docket No. 2010-1640-AIR-E on March 10, 2011 assessing \$4,200 in administrative penalties with \$840 deferred.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (512) 239-0735, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Elizabeth Perez dba JD's Kwik Stop, Docket No. 2010-1641-PWS-E on March 10, 2011 assessing \$501 in administrative penalties with \$100 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tiger Trailers, Inc., Docket No. 2010-1642-AIR-E on March 10, 2011 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Todd Huddleson, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United Copper Industries, Inc., Docket No. 2010-1643-AIR-E on March 10, 2011 assessing \$7,125 in administrative penalties with \$1,425 deferred.

Information concerning any aspect of this order may be obtained by contacting Todd Huddleson, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Republic Plastics, Ltd., Docket No. 2010-1644-AIR-E on March 10, 2011 assessing \$3,725 in administrative penalties with \$745 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding First Texas Homes, Inc., Docket No. 2010-1668-WQ-E on March 10, 2011 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Beeville, Docket No. 2010-1681-PWS-E on March 10, 2011 assessing \$1,180 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kelly Wisian, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PAC-N-SAC STORES, INC. dba Pac-N-Sac 101, Docket No. 2010-1698-PST-E on March 10, 2011 assessing \$2,978 in administrative penalties with \$595 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enterprise Products Operating LLC, Docket No. 2010-1465-AIR-E on March 10, 2011 assessing \$6,448 in administrative penalties with \$1,289 deferred.

Information concerning any aspect of this order may be obtained by contacting Phil Hampsten, Enforcement Coordinator at (512) 239-6732, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding VHI Construction, Docket No. 2010-2011-WQ-E on March 10, 2011 assessing \$700.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Field Citation Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Ameer Ali Jasani, Docket No. 2009-0959-PST-E on March 15, 2011 assessing \$20,230 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201101164

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 23, 2011



### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 2, 2011**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 2, 2011**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Anmol Enterprises Inc. dba Tarkington Exxon; DOCKET NUMBER: 2010-1379-PST-E; TCEQ ID NUMBER: RN101780450; LOCATION: 14615 Highway 105, Cleveland, Liberty County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2)(A)(i)(III), by failing to test the line leak detectors at least once per year for performance and operational reliability; TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct reconciliation of inventory control records at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0%

of the total substance flow-through for the month plus 130 gallons; TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(4)(A)(ii)(II), by failing to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallons per hour from any portion of the UST system; Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification; PENALTY: \$5,860; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Bruce F. Neibrandt dba 5 O'clock Somewhere Bar; DOCKET NUMBER: 2011-0062-PWS-E; TCEQ ID NUMBER: RN105854236; LOCATION: 45 Depot Street, Telferner, Victoria County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the months of March 2010 - October 2010, and failing to provide public notice of the failure to sample for the months of March 2010 - September 2010; PENALTY: \$3,053; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: City of Overton; DOCKET NUMBER: 2009-0452-MWD-E; TCEQ ID NUMBER: RN102096203; LOCATION: 2,900 feet east of the intersection of Henderson Street and Linda Lane, Overton, Rusk County; TYPE OF FACILITY: domestic wastewater treatment system; RULES VIOLATED: TWC, §26.121(a), 30 TAC §305.125(a), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010242001 Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with the permit effluent limits; TWC, §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0010242001 Effluent Limitations, by failing to comply with the permit effluent limits; 30 TAC §305.125(1) and TPDES Permit Number WQ0010242001 Sludge Provisions Finding, by failing to submit the annual sludge report for the monitoring period ending July 31, 2008; 30 TAC §305.125(17) and §319.1, and TPDES Permit Number WQ0010242001 Monitoring and Reporting Requirements Number 1, by failing to timely submit the parameter data for total ammonia nitrogen daily maximum (milligrams per liter (mg/L)) for the monitoring period ending March 31, 2008; 30 TAC §305.126(a) and TPDES Permit Number WQ0010242001 Operational Requirements Number 2, by failing to initiate engineering and financial planning for expansion and/or upgrading of the wastewater treatment and/or collection facilities when the effluent daily average flow measurements reach 75% of the permitted daily average flow limit for three consecutive months; 30 TAC §305.125(5) and TPDES Permit Number WQ0010242001 Operation Requirements Number 1, by failing to prevent unauthorized discharges; and 30 TAC §305.125(1) and TPDES Permit Number WQ0010242001 Monitoring and Reporting Requirements 7.c., by failing to report effluent violations which were more than 40% greater than the permit effluent limitation; PENALTY: \$44,491; STAFF ATTORNEY: Jeffrey J. Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: City of Strawn; DOCKET NUMBER: 2009-1994-MWD-E; TCEQ ID NUMBER: RN102896024; LOCATION: 500

feet east of Palo Pinto Avenue and 500 feet north of State Highway 108 on the east side of Strawn, Palo Pinto County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), TPDES Permit Number WQ0010326001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, and TCEQ Agreed Order 2007-1060-MWD-E, Ordering Provision Number 3, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(17) and §319.1 and TPDES Permit Number WQ0010326001, Monitoring and Reporting Requirements Number 1, by failing to submit data on the discharge monitoring reports for five-day Biochemical Oxygen Demand daily average (pounds per day) for monitoring periods ending October 31, 2008, and November 30, 2008, and E. Coli daily average and single grab for the monitoring period ending May 31, 2009, by the 20th day of the following month; PENALTY: \$18,980; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Dolores A. Luke dba Little Big Horn Services; DOCKET NUMBER: 2010-0745-PWS-E; TCEQ ID NUMBER: RN101228740; LOCATION: 8029 FM Road 92, Silsbee, Hardin County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failing to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; PENALTY: \$688; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2009-1896-IHW-E; TCEQ ID NUMBER: RN100210574; LOCATION: Chocolate Bayou Complex, located on FM 2917, 12 miles south of Alvin and 1.5 miles southeast of Liverpool, Brazoria County; TYPE OF FACILITY: chemical manufacturing complex; RULES VIOLATED: 30 TAC §335.62 and 40 Code of Federal Regulations (CFR) §262.11, by failing to conduct hazardous waste determinations and classifications for each solid waste generated at the facility; 30 TAC §335.69(a)(1)(B) and 40 CFR §262.34(b) and §265.190, by failing to obtain a permit to operate a hazardous waste storage facility and failing to comply with the 90-day accumulation time limitation for storing hazardous waste; and 30 TAC §335.6(c), by failing to update the Notice of Registration for any changes or additional information within 90 days of the occurrence of such changes or becoming aware of such additional information; PENALTY: \$67,050; STAFF ATTORNEY: Jeff Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Hadi & Aga Store Management LLC dba Fina Gas Station; DOCKET NUMBER: 2010-1204-PST-E; TCEQ ID NUMBER: RN101541308; LOCATION: 9251 White Settlement Road, White Settlement, Tarrant County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(4), by failing to ensure that corrosion protection is provided to all underground metal components of a UST system which are designed or used to convey, contain, or store regulated substances; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and (iii)(I), by failing to monitor the UST for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), failing to conduct reconciliation of detailed inventory control records at least

once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, and failing to record inventory volume measurement for the regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; and 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free from liquid or debris; PENALTY: \$18,181; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: HAPPY CHAP, LLC dba Happy Chap; DOCKET NUMBER: 2010-0576-PST-E; TCEQ ID NUMBER: RN102275955; LOCATION: 2802 Highway 90, Liberty, Liberty County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §26.3475(d) and 30 TAC §334.49(a), by failing to provide corrosion protection to all metal components of a UST system which is designed or used to convey, contain, or store regulated substances; TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct reconciliation of detailed inventory control records at least once each month sufficiently accurate to detect a release as small as 1.0% of the total substance flow-through for the month plus 130 gallons; PENALTY: \$6,100; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Scott Kimble and Karena Kimble dba Medina Highlands; DOCKET NUMBER: 2008-1176-PWS-E; TCEQ ID NUMBER: RN104011432; LOCATION: Mountain Drive, 0.7 miles past Avalon State Park on Park Road 37, Lake Hills, Bandera County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to have the water supply operated under the direct supervision of a water works operator who holds a valid Class "D" license issued by the commission; 30 TAC §290.42(e)(2) and (3), by failing to properly disinfect the groundwater prior to it entering the distribution system and operate the disinfection equipment so that continuous and effective disinfection can be secured under all conditions; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to maintain the disinfectant residual at a minimum of 0.2 mg/L free chlorine throughout the distribution system; 30 TAC §290.110(c)(4)(A), by failing to monitor the free chlorine residual at representative locations within the distribution system at least once every seven days; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device on the well discharge line to measure the production yields and provide for the accumulation of water production data; 30 TAC §290.43(c)(1) - (3), by failing to provide a ground storage tank that is designed and maintained in accordance with American Water Works Association; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; and 30 TAC §290.44(d), by failing to provide a minimum pressure of 35 pounds per square inch throughout the distribution system at all times; and 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to conduct routine bacteriological monitoring of the public water supply and failing to provide public notice of the

failure to perform routine bacteriological monitoring; PENALTY: \$6,581; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: VSV, Inc. dba Best Stop #4; DOCKET NUMBER: 2010-0452-PST-E; TCEQ ID NUMBER: RN102279742; LOCATION: 1212 East Texas Avenue, Baytown, Harris County; TYPE OF FACILITY: three USTs and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.42(i), by failing to inspect all sumps including the dispenser sumps, manways, overflow containers, or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification; PENALTY: \$4,704; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Wayman Grigson, Executor of Imogene Grigson Holloway Estate; DOCKET NUMBER: 2009-1650-MLM-E; TCEQ ID NUMBER: RN105777072; LOCATION: 6224 Brodnax Lane, San Angelo, Tom Green County; TYPE OF FACILITY: warehouse; RULES VIOLATED: 30 TAC §331.3(a) and §331.7(a) and 40 CFR, §144.11, by failing to obtain authorization for an underground injection well; 30 TAC §331.10(d) and (e), by failing to submit the appropriate inventory information to the TCEQ; 30 TAC §335.4, by failing to prevent the unauthorized discharge of an industrial hazardous waste; and 30 TAC §324.4(1), by failing to prevent the unauthorized discharge of used oil; PENALTY: \$7,811; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

TRD-201101148

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 22, 2011

### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which



in this case is **May 2, 2011**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 2, 2011**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: 5 Star Diamond, LLC dba Diamond Mart; DOCKET NUMBER: 2010-0886-PST-E; TCEQ ID NUMBER: RN102226693; LOCATION: 3705 South Carrier Parkway, Grand Prairie, Dallas County; TYPE OF FACILITY: two underground storage tanks (USTs) and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first; 30 TAC §115.245(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with the UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris; and 30 TAC §334.50(b)(2)(A) and (A)(i)(III) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; PENALTY: \$11,023; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-3016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Chris W Duncan dba Lakeside Water Company; DOCKET NUMBER: 2010-1371-PWS-E; TCEQ ID NUMBER: RN103778247; LOCATION: 28654 South United States Highway 69, Angelina County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.42(e)(3), by failing to install disinfection equipment so that continuous and effective disinfection can be secured under all conditions; 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a Class "D" or higher license; 30 TAC §290.39(h)(1) and (j), by failing to notify and receive approval from the executive director prior to making any significant change or addition to the facility's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and failing to provide public notification of the failure to sample for months of March - July 2010; PENALTY: \$3,320; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512)

239-0620; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Douglas Meier dba Meier Recycle Center; DOCKET NUMBER: 2011-0066-WQ-E; TCEQ ID NUMBER: RN105447460; LOCATION: 2708 South Kaufman Street, Ennis, Ellis County; TYPE OF FACILITY: scrap material recycling business; RULES VIOLATED: 40 Code of Federal Regulations (CFR) §122.26(c), 30 TAC §281.25(a)(4), and TCEQ Agreed Order Docket Number 2009-0080-WQ-E, Ordering Provision Number 2.a., by failing to obtain authorization to discharge storm water associated with industrial activities under Texas Pollutant Discharge Elimination System Multi-Sector Industrial General Permit Number TXR050000; PENALTY: \$26,400; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Flat Rock Minerals, LLC dba De Berry Mine; DOCKET NUMBER: 2009-1688-WQ-E; TCEQ ID NUMBER: RN105807697; LOCATION: 3.5 miles west on Farm-to-Market (FM) Road 1649 from Ore City and one mile west on Periwinkle Road past Stanley Road on the south side, Upshur County; TYPE OF FACILITY: crushed and broken limestone; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities; and TWC, §26.121, by failing to prevent the unauthorized discharge of sediment adjacent to water in the state which resulted in a documented serious impact to the environment; PENALTY: \$31,900; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: George Sprague dba George's Tire Shop; DOCKET NUMBER: 2010-1577-WQ-E; TCEQ ID NUMBER: RN105473672; LOCATION: 903 Dallas Street, Rockport, Aransas County; TYPE OF FACILITY: scrap waste and recycling operation; RULES VIOLATED: 30 TAC §281.25(a)(4), 40 CFR §122.26(c), and TCEQ Default Order Number 2009-0685-WQ-E, Ordering Provision Numbers 2.a. and 2.b., by failing to obtain authorization to discharge storm water associated with industrial activities through a Multi-Sector General Permit; PENALTY: \$13,000; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: Gregory S. Shindler; DOCKET NUMBER: 2010-1376-PST-E; TCEQ ID NUMBER: RN102459799; LOCATION: corner of FM Road 132 and FM Road 2967, Crockett, Houston County; TYPE OF FACILITY: UST system and a former convenience store; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days from the occurrence of the change; PENALTY: \$6,300; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: M. Amaan Inc; DOCKET NUMBER: 2010-1635-PST-E; TCEQ ID NUMBER: RN102827805; LOCATION: 697 Medina Street, Eagle Pass, Maverick County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the

agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; and TWC, §26.3475(d) and 30 TAC §334.49(a) and §334.54(b)(2) and (d)(2), by failing to ensure that any residue from stored regulated substances which remained in the system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; failing to provide proper corrosion protection for the UST system; and failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: \$3,675; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(8) COMPANY: Mac Singh dba Cal Pro Express; DOCKET NUMBER: 2010-1513-MSW-E; TCEQ ID NUMBER: RN105911986; LOCATION: entrance ramp to Interstate 30 and FM Road 603, Clyde, Callahan County; TYPE OF FACILITY: discharge or spill of diesel fuel; RULES VIOLATED: 30 TAC §327.5(c), by failing to submit written information such as a letter, describing the details of the discharge or spill and supporting the adequacy of the response action, to the appropriate TCEQ regional manager within 30 working days of the discovery of the reportable discharge or spill; PENALTY: \$1,050; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC 175, (210) 403-4016; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: Patrick Y. Shin d/b/a Cedar Hill Cleaners; DOCKET NUMBER: 2010-1646-DCL-E; TCEQ ID NUMBER: RN100607845; LOCATION: 223 East FM 1382, Cedar Hill, Dallas County; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: THSC, §374.102(e), 30 TAC §337.11(e), and TCEQ Agreed Order, Docket Number 2007-1438-DCL-E, Ordering Provision Number 2.a., by failing to renew the facility's dry cleaner registration; and TWC, §5.702, 30 TAC §337.14(c), and TCEQ Agreed Order, Docket Number 2007-1438-DCL-E, Ordering Provision Numbers 1 and 2.b., by failing to pay an administrative penalty and outstanding dry cleaner fees; PENALTY: \$7,374; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Patrick Y. Shin dba Douglas Cleaners; DOCKET NUMBER: 2010-1647-DCL-E; TCEQ ID NUMBER: RN102192267; LOCATION: 103 East Belt Line Road, Suite M, Cedar Hill, Dallas County; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: THSC, §374.102(e), 30 TAC §337.11(e), and TCEQ Agreed Order, Docket Number 2007-1780-DCL-E, Ordering Provision Number 2.a., by failing to renew the facility's dry cleaner registration; and TWC, §374.102(e), 30 TAC §337.14(c), and TCEQ Agreed Order Docket Number 2007-1780-DCL-E, Ordering Provision Numbers 1 and 2.b., by failing to pay an administrative penalty and outstanding dry cleaner fees; PENALTY: \$7,281; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Robert Choate dba Pop's Tire Shop; DOCKET NUMBER: 2010-1268-MSW-E; TCEQ ID NUMBER: RN103073383; LOCATION: 1949 Woodworth Boulevard, Port Arthur, Jefferson County; TYPE OF FACILITY: retail tire shop; RULES VIOLATED: 30 TAC §328.56(d)(2) and §328.60(a) and TCEQ Agreed Order Docket Number 2007-0867-MSW-E, Ordering Provision 2.a., by failing to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the

ground; PENALTY: \$31,250; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: SAVS Investments, Inc. d/b/a Fridays General Store; DOCKET NUMBER: 2010-1634-PWS-E; TCEQ ID NUMBER: RN104711163; LOCATION: 7678 East United States Highway 290, Johnson City, Blanco County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), by failing to collect routine distribution water samples for coliform analysis and failing to provide public notice of the failure to sample; PENALTY: \$3,920; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(13) COMPANY: Terry Beverlin; DOCKET NUMBER: 2010-1562-MLM-E; TCEQ ID NUMBER: RN105991012; LOCATION: 5009 Spillers Road, Lumberton, Hardin County; TYPE OF FACILITY: unauthorized waste disposal site; RULES VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibition on outdoor burning; 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$2,134; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: Trinity Turf Nurse Ry, Inc.; DOCKET NUMBER: 2010-1504-WR-E; TCEQ ID NUMBER: RN100798362; LOCATION: Foutch Road and FM Road 377, about two miles southeast of Pilot Point, Denton County; TYPE OF FACILITY: turf grass nursery; RULES VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain authorization prior to storing, impounding, diverting, or using state water; PENALTY: \$1,000; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201101149

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 22, 2011



## Notice of Water Quality Applications

The following notices were issued on March 11, 2011 through March 18, 2011.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

## INFORMATION SECTION

CITY OF CHILDRESS has applied for a renewal of TCEQ Permit No. WQ0010076003, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 232,000 gallons per day in the Interim Phase and a daily average flow not to exceed 700,000 gallons per day in the Final Phase via surface irrigation of 232 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater

ter treatment facility and disposal site are located within the property boundaries of the Childress Memorial Airport, approximately 4 miles west of the intersection of U.S. Highway 287 and 83-62 in Childress County, Texas 79201.

REAL HOLDINGS GROUP LLC has applied for a renewal of TPDES Permit No. WQ0012368001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located 800 feet south and 1,600 feet west of the northwest corner of the Lee County Fairgrounds in Lee County, Texas 78942.

COMBINED CONSUMERS SPECIAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0014685001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 3.2 miles south from the intersection of State Highway 276 and Farm-to-Market Road 751, on the west side of Farm-to-Market Road 751 in Hunt County, Texas 75474.

CITY OF HEARNE has applied for a renewal of TCEQ Permit No. WQ0004699000, which authorizes the land application of sewage sludge for beneficial use. The current permit authorizes land application of sewage sludge for beneficial use on 63.9 acres. This permit will not authorize a discharge of pollutants into waters in the State. The sewage sludge land application site is located within the boundaries of the Hearne Municipal Airport, approximately 1.7 miles southwest of the intersection of U.S. Highway 79 and State Highway 485, directly west of the main runway, in Robertson County, Texas 77859.

POINT AQUARIUS MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011219001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The facility is located at 11783 Sagittarius Drive East, approximately 1.0 mile southwest of the intersection of Farm-to-Market Road 1097 and Point Aquarius Boulevard, in Willis, in Montgomery County, Texas 77318.

TWO RIVERS REALM GP LLC has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014986001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility will be located 900 feet north of and 1,150 feet west of the intersection of U.S. Highway 60 and Farm-to-Market Road 521 in Matagorda County, Texas 77483.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

THE CITY OF DENTON has applied to the TCEQ for a minor amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010027004 to reduce the interim II phase flow from a daily average flow not to exceed 800,000 gallons per day (gpd) to a daily average flow not to exceed 375,000 gpd. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,600,000 gallons per day in the final phase. The facility is located at 5495 S. Florence Road, approximately 14,800 feet southeast of the intersection of Highway 2449 and Highway 156 at Ponder and 14,600 feet northeast of the intersection of Highway 1384 and Highway 156 in Denton County, Texas 76210.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.state.tx.us](http://www.TCEQ.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201101163  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: March 23, 2011

### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on March 17, 2011, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Gary Lee and Marilu Lee Corpian; SOAH Docket No. 582-10-5165; TCEQ Docket No. 2009-1720-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Gary Lee and Marilu Lee Corpian on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201101165  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: March 23, 2011

## Texas Health and Human Services Commission

### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on April 20, 2011, at 2:00 p.m., to receive comment on proposed Medicaid payment rates for the Blind Children's Vocational Discovery and Development Program (BCVDDP). The public hearing will be held in the Permian Basin Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas 78758-4021. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and the Texas Administrative Code, Title 1, §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed payment rates for the BCVDDP are proposed to be effective June 1, 2011.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC §355.8381, which addresses the reimbursement methodology for case management services for children who are blind and visually impaired.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after April 5, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis Department by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at [esther.brown@hhsc.state.tx.us](mailto:esther.brown@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be

sent by U.S. mail to the attention of Rate Analysis Department, HHSC, Rate Analysis Department, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis Department at (512) 491-1998; or by e-mail to [esther.brown@hhsc.state.tx.us](mailto:esther.brown@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis Department, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact the Rate Analysis Department at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201101099

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: March 16, 2011



## **Department of State Health Services**

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout TX	Geoscience Engineering & Testing	L06398	Dallas	00	03/10/11

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Anderson	National Oilwell Varco, L.P.	L06094	Anderson	05	03/02/11
Arlington	Heartplace, P.A.	L06336	Arlington	01	03/03/11
Baytown	San Jacinto Methodist Hospital	L02388	Baytown	61	03/02/11
Baytown	DMS Health Technologies	L05594	Baytown	13	03/08/11
Bedford	Texas Health Harris Methodist Hospital Hurst-Euless-Bedford	L02303	Bedford	38	03/07/11
Bedford	Texas Oncology, P.A. dba Edwards Cancer Center	L05550	Bedford	24	03/01/11
College Station	NDE Solutions, L.L.C.	L05879	College Station	28	03/09/11
Conroe	Arif Abdullah, M.D., P.A.	L06276	Conroe	01	03/07/11
Dallas	Methodist Hospitals of Dallas	L00659	Dallas	83	03/03/11
Dallas	Cardinal Health	L02048	Dallas	136	03/04/11
Denison	STS Construction Material Testing	L06280	Denison	01	03/08/11
El Paso	Tenet Hospitals Limited dba Sierra Providence East Medical Center	L06152	El Paso	09	02/18/11
Frisco	Tenet Hospital, Ltd. dba Centennial Medical Center	L05768	Frisco	11	03/04/11
Galveston	The University of Texas Medical Branch	L01299	Galveston	89	03/07/11
Gardendale	Permian Nondestructive Testing, Inc.	L06001	Gardendale	11	02/28/11
Hereford	Deaf Smith County Hospital District dba Hereford Regional Medical Center	L03111	Hereford	16	03/08/11
Houston	The University of Texas M.D. Anderson Cancer Center	L00466	Houston	126	02/28/11
Houston	Advanced Nuclear Consultants	L06167	Houston	06	03/04/11
Houston	AGD Inspection Services	L06368	Houston	02	03/10/11
Lake Jackson	Brazosport Memorial Hospital	L03027	Lake Jackson	30	03/01/11
Lubbock	Texas Tech University	L01536	Lubbock	93	03/08/11
McAllen	McAllen Hospitals, L.P. dba McAllen Medical Heart Hospital	L04902	McAllen	22	02/18/11
Mexia	Parkview Regional Hospital	L05144	Mexia	25	03/09/11
New Braunfels	Cancer Care Network of South Texas, P.A.	L05717	New Braunfels	18	03/09/11
Plano	Texas Health Presbyterian Hospital Plano	L04467	Plano	59	03/08/11
Rowlett	Rowlett Cardiology Associates, P.A. dba Texas Cardiac Associates	L05450	Rowlett	09	03/04/11
San Angelo	Shannon Clinic	L04216	San Angelo	47	03/10/11
San Antonio	Methodist Healthcare System of San Antonio, Ltd. dba The Gamma Knife Center	L05076	San Antonio	30	03/01/11
San Antonio	UT Medicine San Antonio	L05410	San Antonio	16	03/08/11
San Antonio	University of Texas Health Science Center at San Antonio Edinburg	L06029	San Antonio	04	03/08/11

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Sherman	Scela, Inc. dba Cardinal Health	L05461	Sherman	15	03/04/11
Sugar Land	Methodist Sugar Land Hospital	L05788	Sugar Land	29	03/01/11
Sugar Land	Methodist Sugar Land Hospital	L05788	Sugar Land	30	03/08/11
Texas City	CHCA Mainland, L.P. dba Mainland Medical Center	L02577	Texas City	41	03/07/11
Throughout TX	HTS, Inc. Consultants	L02757	Houston	20	02/24/11
Throughout TX	Protechnics	L03835	Houston	57	03/08/11
Throughout TX	Oceaneering International, Inc.	L04463	Ingleside	76	03/01/11
Throughout TX	City of Killeen	L04668	Killeen	09	02/23/11
Throughout TX	Non Destructive Inspection Corporation	L02712	Lake Jackson	142	03/03/11
Throughout TX	Northern Shared Medical Services, Inc.	L06142	Nacogdoches	02	03/01/11
Throughout TX	Techcorr U.S.A., L.L.C. dba AUT Specialists, L.L.C.	L05972	Palestine	82	02/23/11
Throughout TX	Apex Geoscience, Inc.	L04929	Tyler	32	03/03/11
Tomball	Northwest Houston Heart Center	L05958	Tomball	10	03/10/11
Tyler	Mother Frances Hospital	L01670	Tyler	166	03/04/11
Wichita Falls	WFCC Radiation Management Company, L.L.C. dba Texoma Cancer Center	L06288	Wichita Falls	03	03/10/11

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Alice	Adcock Pipe and Supply, Inc.	L05491	Alice	05	02/25/11
Austin	Seton Healthcare dba University Medical Center at Brackenridge	L00268	Austin	115	02/28/11
Midlothian	Ash Grove Texas, L.P.	L05424	Midlothian	05	03/01/11
San Antonio	Sioco Cardiology, P.A.	L05662	San Antonio	05	02/25/11
Throughout TX	Building Materials Corporation of America dba GAF Materials Corporation	L03811	Dallas	18	02/24/11
Throughout TX	Millennium Engineers Group, Inc.	L05388	Edinburg	08	02/28/11
Throughout TX	AMEC Earth & Environmental, Inc.	L03622	El Paso	23	03/03/11
Throughout TX	Encon International, Inc.	L04528	El Paso	15	03/01/11

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Houston	Sheldon Rubinfeld, M.D.	L04410	Houston	11	03/07/11
Mesquite	Baylor Medical Center of Garland dba Baylor Diagnostic Imaging Center Mesquite	L04914	Mesquite	24	03/01/11
Plano	Collin County Cardiology, P.A.	L06096	Plano	01	03/02/11
Trophy Club	Trophy Club Medical Center, L.P. dba Trophy Club Medical Center	L05827	Trophy Club	06	03/01/11

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201101108  
 Lisa Hernandez  
 General Counsel  
 Department of State Health Services  
 Filed: March 18, 2011



Notice of Amendment to the Texas Schedules of Controlled Substances

This amendment was signed by David L. Lakey, M.D., Commissioner of the Department of State Health Services on March 21, 2011, and will become effective 21 days following publication of this notice in the *Texas Register*.

The Administrator of the Drug Enforcement Administration (DEA) temporarily placed five synthetic cannabinoids into Schedule I of the Controlled Substances Act (CSA) effective March 1, 2011. The substances are 1-pentyl-3-(1-naphthoyl) indole (JWH-018), 1-butyl-3-(1-naphthoyl) indole (JWH-073), 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole (JWH-200), 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497), and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol; CP-47,497 C8 homologue). This final rule was published in the *Federal Register*, Volume 73, Number 40, pages 11075-11078. This action is based on a finding by the Administrator of the DEA that the placement of these synthetic cannabinoids into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. The Administrator of the DEA has taken this action based on the following:

- (1) The five synthetic cannabinoids are not intended for human consumption;
- (2) The five synthetic cannabinoids each has a high potential for abuse; and
- (3) There are no currently accepted medical uses in treatment in the United States for the five synthetic cannabinoids.

Pursuant to Section 481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced action was published in the *Federal Register*; and David L. Lakey, M.D., in the capacity as Commissioner of the Department of State Health Services, hereby orders that the substances 1-pentyl-3-(1-naphthoyl) indole (JWH-018), 1-butyl-3-(1-naphthoyl) indole (JWH-073), 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole (JWH-200), 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497), and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol; CP-47,497 C8 homologue) be placed into Schedule I of Texas schedules of controlled substances. Additionally, a new category entitled "Temporarily listed substances subject to emergency scheduling" will be added to Schedule I.

SCHEDULE I

- Schedule I consists of:
- Schedule I opiates
- \*\*\*
- Schedule I opium derivatives
- \*\*\*
- Schedule I hallucinogenic substances
- \*\*\*
- Schedule I stimulants
- \*\*\*
- Schedule I depressants
- \*\*\*
- \*Schedule I temporarily listed substances subject to emergency scheduling.
- Any material, compound, mixture or preparation which contains any quantity of the following substances:
- (1) 5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, its optical, positional, and geometric isomers, salts and salts of isomers--7297 (Other names: CP-47,497);
- (2) 5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, its optical, positional, and geometric isomers, salts and salts of isomers--7298 (Other names: cannabicyclohexanol and CP-47,497 C8 homologue);
- (3) 1-Butyl-3-(1-naphthoyl) indole, its optical, positional, and geometric isomers, salts and salts of isomers--7173 (Other names: JWH-073);
- (4) 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl) indole, its optical, positional, and geometric isomers, salts and salts of isomers--7200 (Other names: JWH-200); and
- (5) 1-Pentyl-3-(1-naphthoyl) indole, its optical, positional, and geometric isomers, salts and salts of isomers--7118 (Other names: JWH-018 and AM678).

Changes to the schedules are designated by a single asterisk (\*)

TRD-201101169  
 Lisa Hernandez  
 General Counsel  
 Department of State Health Services  
 Filed: March 23, 2011



Texas Department of Housing and Community Affairs

Announcement of the 2011 Public Hearing Schedule for Public Comment on 2011 Competitive Housing Tax Credit Applications

The Texas Department of Housing and Community Affairs' (the "Department") mission is to help Texans achieve a higher quality of life by building better communities. Through our rental production programs, the Department encourages the new construction or rehabilitation of high-quality multifamily housing, primarily through private developers. These developments benefit Texans by providing qualified families with safe, affordable, quality housing.

The following six (6) public hearings are provided to gather public comment on the 2011 Competitive Housing Tax Credit Applications. The schedule of these meetings is provided below:

Lubbock, Region 1

Monday, April 11

6:00 p.m.

Mahon Library Community Room

1306 9th Street

Lubbock, TX 79401

<http://library.ci.lubbock.tx.us/>

Dallas, Region 3

Thursday, April 14

6:00 p.m.

J. Erik Johnson Central Library Auditorium

1515 Young Street

Dallas, TX 75201

<http://dallaslibrary.org/>

Houston, Region 6

Tuesday, April 5

6:00 p.m.

City Hall Annex City Chambers/Council Chambers Office

900 Bagby/901 Bagby

Houston, TX 77002

[www.houstontx.gov](http://www.houstontx.gov)

Austin, Region 7

Monday, April 4

6:00 p.m.

William B. Travis Building 1-111

1701 N. Congress

Austin, TX 78701

[www.tbpc.state.tx.us](http://www.tbpc.state.tx.us)

Harlingen, Region 11

Tuesday, April 12

6:00 p.m.

Harlingen Public Library Auditorium

410 '76 Drive

Harlingen, TX 78550

El Paso, Region 13

Thursday, April 7

6:00 p.m.

City Council Chambers Office

2 Civic Center Plaza, 10th Floor

El Paso, TX 79901

[www.elpasotexas.gov](http://www.elpasotexas.gov)

The application logs for all 2011 Competitive Housing Tax Credit Applications will be published on the Department's website (after March 15, 2011) at the following link: <http://www.tdhca.state.tx.us/multifamily/htc/index.htm>.

Written comments are also encouraged. All public comment must be received, by the Department, by June 15, 2011 for the Competitive Housing Tax Credit Program. Such comments should be addressed to:

Texas Department of Housing and Community Affairs

Multifamily Finance Production Division

P.O. Box 13941

Austin, Texas 78711-3941

Email to: [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us)

Facsimile: (512) 475-0764

For additional information you may contact the Multifamily Division at (512) 475-3340 or visit the program's web site at <http://www.tdhca.state.tx.us/multifamily/htc/index.htm>.

Individuals who require auxiliary aids or services for these meetings should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two (2) days before the meeting so that appropriate arrangements can be made.

Individuals who require a language interpreter for the hearing should contact Gina Esteves at (512) 475-3943 at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Gina Esteves al siguiente número (512) 475-3943 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201101161

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: March 23, 2011

## **Houston-Galveston Area Council**

### **Request for Proposals**

The Houston-Galveston Area Council solicits proposals from qualified organizations to provide Quality Child Care Initiatives and Activities. A proposal package will be available for download at [www.h-gac.com](http://www.h-gac.com) or [www.wrksolutions.com](http://www.wrksolutions.com) beginning at 12:00 noon Central Standard Time on Monday, March 21, 2011. Hard copies of the proposal package will also be available at that time.

Prospective bidders may contact Carol Kimmick at (713) 627-3200 or [carol.kimmick@h-gac.com](mailto:carol.kimmick@h-gac.com) or visit the website to request a proposal package.

Proposals are due at H-GAC offices on or before 10:00 a.m. Central Standard Time on Monday, April 4, 2011. Mailed proposals must be sent overnight and received no later than Monday, April 4, 2011. H-GAC will not accept late proposals; we will make no exceptions.



TRD-201101146  
Jack Steele  
Executive Director  
Houston-Galveston Area Council  
Filed: March 22, 2011

◆ ◆ ◆  
**Texas Department of Insurance**

**Company Licensing**

Application to change the name of DELOS INSURANCE COMPANY to IMPERIUM INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Wilmington, Delaware.

Application to change the name of JEFFERSON INSURANCE COMPANY to AGA INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in New York City, New York.

Application for admission to the State of Texas by SAMSUNG FIRE & MARINE INSURANCE CO., LTD (US BRANCH), a foreign fire and/or casualty company. The home office is in New York City, New York.

Application for incorporation in the State of Texas by TMHP INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-201101168  
Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: March 23, 2011

◆ ◆ ◆  
**Third Party Administrator Application**

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application of MEDEX INSURANCE SERVICES, INC., a foreign third party administrator. The home office is TOWSON, MARYLAND.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-201101167  
Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: March 23, 2011

◆ ◆ ◆  
**Texas Lottery Commission**

**Instant Game Number 1327 "Black Cherry Doubler"**

**1.0 Name and Style of Game.**

A. The name of Instant Game No. 1327 is "BLACK CHERRY DOUBLER". The play style is "slots".

**1.1 Price of Instant Ticket.**

A. Tickets for Instant Game No. 1327 shall be \$5.00 per ticket.

**1.2 Definitions in Instant Game No. 1327.**

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: LEMON SYMBOL, POT OF GOLD SYMBOL, STRAWBERRY SYMBOL, DIAMOND SYMBOL, GRAPES SYMBOL, HORSESHOE SYMBOL, APPLE SYMBOL, ORANGE SYMBOL, WATERMELON SYMBOL, GOLD BAR SYMBOL, COIN SYMBOL, STAR SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$40.00, \$50.00, \$100, \$500, \$2,000 and \$50,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

**Figure 1: GAME NO. 1327 - 1.2D**

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
<b>LEMON SYMBOL</b>	<b>LEMON</b>
<b>POT OF GOLD SYMBOL</b>	<b>GOLD</b>
<b>STRAWBERRY SYMBOL</b>	<b>STRWBRY</b>
<b>DIAMOND SYMBOL</b>	<b>DIAMOND</b>
<b>GRAPES SYMBOL</b>	<b>GRAPES</b>
<b>HORSESHOE SYMBOL</b>	<b>SHOE</b>
<b>APPLE SYMBOL</b>	<b>APPLE</b>
<b>ORANGE SYMBOL</b>	<b>ORANGE</b>
<b>WATERMELON SYMBOL</b>	<b>WTRMLN</b>
<b>GOLD BAR SYMBOL</b>	<b>GOLD BAR</b>
<b>COIN SYMBOL</b>	<b>COIN</b>
<b>STAR SYMBOL</b>	<b>STAR</b>
<b>\$5.00</b>	<b>FIVE\$</b>
<b>\$10.00</b>	<b>TEN\$</b>
<b>\$15.00</b>	<b>FIFTN</b>
<b>\$20.00</b>	<b>TWENTY</b>
<b>\$40.00</b>	<b>FORTY</b>
<b>\$50.00</b>	<b>FIFTY</b>
<b>\$100</b>	<b>ONE HUND</b>
<b>\$500</b>	<b>FIV HUND</b>
<b>\$2,000</b>	<b>TWO THOU</b>
<b>\$50,000</b>	<b>50 THOU</b>

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize- A prize of \$2,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1327), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1327-0000001-001.

K. Pack - A pack of "BLACK CHERRY DOUBLER" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BLACK CHERRY DOUBLER" Instant Game No. 1327 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BLACK CHERRY DOUBLER" Instant Game is determined once the latex on the ticket is scratched off to expose 64 (sixty-four) Play Symbols. If a player reveals 3 matching play symbols within a PULL, the player wins the PRIZE for that PULL. If a player reveals 3 "COIN" play symbols in any one PULL, the player wins DOUBLE the PRIZE for that PULL. If a player reveals 3 "STAR" play symbols in any one PULL, the player wins all 16 PRIZES instantly! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 64 (sixty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;
  2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
  3. Each of the Play Symbols must be present in its entirety and be fully legible;
  4. Each of the Play Symbols must be printed in black ink except for dual image games;
  5. The ticket shall be intact;
  6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
  7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
  8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
  9. The ticket must not be counterfeit in whole or in part;
  10. The ticket must have been issued by the Texas Lottery in an authorized manner;
  11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
  12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
  13. The ticket must be complete and not miscut, and have exactly 64 (sixty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
  14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
  15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
  16. Each of the 64 (sixty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
  17. Each of the 64 (sixty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
  18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
  19. The ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's

discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

- A. Players can win up to sixteen (16) times on a ticket in accordance with the approved prize structure.
- B. Adjacent non-winning tickets within a pack will not have identical play or prize symbol patterns. Two (2) tickets have identical play or prize symbol patterns if they have the same play or prize symbols in the same positions.
- C. No ticket will contain an occurrence of 3 (three) or more consecutive identical symbols vertically or diagonally.
- D. On PULLS containing three (3) "STAR" play symbols, none of the remaining PULLS will be winners.
- E. Non-winning play symbols will never appear more than five (5) times on a ticket.
- F. The "STAR" play symbol will only appear once in a non-winning PULL with two other non-matching symbols.
- G. The "COIN" play symbol will only appear once in a non-winning PULL with two other non-matching symbols.
- H. The three (3) "COIN" or "STAR" play symbols will only appear within a PULL as dictated by the prize structure.
- I. Non-winning prize symbols will never appear more than 2 (two) times on a ticket.
- J. There will be no duplicate non-winning PULLS on a ticket. Duplicate non-winning PULLS are considered duplicate if the same play symbols appear in the same order in both PULLS.
- K. Non-winning prize symbols will never be the same as the winning prize symbol(s).
- L. The top prize (\$50,000) will appear on every ticket unless otherwise restricted.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "BLACK CHERRY DOUBLER" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BLACK CHERRY DOUBLER" Instant Game prize of \$2,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of

the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BLACK CHERRY DOUBLER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BLACK CHERRY DOUBLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BLACK CHERRY DOUBLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1327. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1327 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	560,000	10.71
\$10	560,000	10.71
\$15	240,000	25.00
\$20	160,000	37.50
\$50	62,600	95.85
\$100	12,500	480.00
\$500	800	7,500.00
\$2,000	85	70,588.24
\$50,000	5	1,200,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.76. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1327 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1327, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201101116

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: March 21, 2011



Instant Game Number 1328 "Fat Cat Tripler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1328 is "FAT CAT TRIPLER". The play style is "key number match with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1328 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1328.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$2.00, \$4.00, \$5.00, \$10.00, \$50.00, \$100, \$200, \$1,000, \$21,000 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, FAT CAT SYMBOL, HORSE SYMBOL, GIRAFFE SYMBOL, DEER SYMBOL, BEAR SYMBOL, COW SYMBOL and PAW SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1328 - 1.2D

PLAY SYMBOL	CAPTION
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$1,000	ONE THOU
\$21,000	21 THOU
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
FAT CAT SYMBOL	CAT
HORSE SYMBOL	HORSE
GIRAFFE SYMBOL	GIRAFFE
DEER SYMBOL	DEER
BEAR SYMBOL	BEAR
COW SYMBOL	COW
PAW SYMBOL	PAW

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00, or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$200.

H. High-Tier Prize - A prize of \$1,000 or \$21,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1328), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1328-0000001-001.

K. Pack - A pack of "FAT CAT TRIPLER" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FAT CAT TRIPLER" Instant Game No. 1328 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FAT CAT TRIPLER" Instant Game is determined once the latex on the ticket is scratched off to expose 20 (twenty) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the CAT NUMBERS play symbols, the player wins the prize for that number. If a player reveals a "FAT CAT" play symbol, the player wins TRIPLE the PRIZE for that symbol! The player must scratch the Bonus area. If a player reveals a "paw" play symbol, the player wins \$20 instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 20 (twenty) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 20 (twenty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 20 (twenty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 20 (twenty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Players can win up to nine (9) times on a ticket in accordance with the approved prize structure.

B. Each ticket will contain three (3) unique "CAT NUMBERS" play symbols.

C. The "FAT CAT" play symbol will never appear in the "CAT NUMBERS" play symbol spots.

D. The "FAT CAT" play symbol will only appear as dictated by the prize structure.

E. Non-winning tickets will contain eight (8) different "YOUR NUMBERS" play symbols.

F. On winning tickets, non-winning play symbols spots will all be different.

G. Non-winning tickets will never contain more than two (2) identical prize symbols.

H. On winning tickets, non-winning prize symbols will never appear more than two (2) times.

I. BONUS: The "PAW" play symbol will only be used as dictated by the prize structure.

J. BONUS: BONUS play symbols will not appear in the main play area.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "FAT CAT TRIPLER" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FAT CAT TRIPLER" Instant Game prize of \$1,000 or \$21,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FAT CAT TRIPLER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "FAT CAT TRIPLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "FAT CAT TRIPLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,160,000 tickets in the Instant Game No. 1328. The approximate number and value of prizes in the game are as follows:



Figure 2: GAME NO. 1328 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	652,800	12.50
\$4	783,360	10.42
\$5	195,840	41.67
\$10	97,920	83.33
\$20	65,280	125.00
\$50	34,068	239.52
\$200	3,400	2,400.00
\$1,000	102	80,000.00
\$21,000	20	408,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.45. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1328 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1328, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201101166  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: March 23, 2011

## North Central Texas Council of Governments

### Request for Proposals for Professional Auditing Services - NCT-2011-21

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The NCTCOG is requesting proposals from qualified firms of certified public accountants, as part of an Agreed-Upon-Procedures contract with the Texas Department of Transportation (TxDOT) to audit all consultant contracts procured through competitive selection and fifteen (15) percent of all other contracts over \$250,000 which have closed during fiscal years 2008, 2009, and 2010. This audit is to be performed in accordance with generally accepted auditing standards, the standards set forth for financial audits in the U.S. General Accounting Office's

(GAO) Government Auditing Standards, and any applicable federal or State regulations.

#### Due Date

Proposals must be received no later than 3:00 p.m., Central Daylight Time, on Friday, April 29, 2011, by mail or email to Molly Rendon, Transportation Fiscal Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888, mrendon@nctcog.org. To obtain a copy of the Request for Proposals, please go to <http://www.nctcog.org/trans/admin/rfp/index.asp>.

Sealed proposals will be opened publicly at NCTCOG's offices at 10:00 a.m., Central Standard Time, on Monday, May 2, 2011 in the William J. Pittstick Executive Board Room. Consultants are invited to attend, however, only the name of the Consultants will be read aloud. No other information will be disclosed.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

#### Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

#### Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full oppor-

tunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201101162  
R. Michael Eastland  
Executive Director  
North Central Texas Council of Governments  
Filed: March 23, 2011

## Texas Board of Pardons and Paroles

### Notice of Contract Amendment

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Texas Board of Pardons and Paroles announces the following notice of contract amendment for Consulting Services to provide an analysis of its current Parole Guidelines Risk Item Factors Scale Instrument.

The purpose of the amendment is to extend contract for Phase II to be effective May 1, 2011. The completion date for Phase II shall be within six (6) months after award or no later than October 31, 2011.

The Contract was awarded to: MGT of America, Inc., 502 East 11th Street, Suite 300, Austin, Texas 78701.

The total funding for Phase II of this Contract shall not exceed \$74,428.00. The total funding for Phase I of this Contract shall not exceed \$83,108.00.

If Phase III is awarded, each phase shall be completed within six (6) months after receipt of Contract modification.

The final report, if Phase III is exercised, shall be submitted within 18 months after the award of the Contract.

TRD-201101107  
Bettie Wells  
General Counsel  
Texas Board of Pardons and Paroles  
Filed: March 18, 2011

## Plateau Water Planning Group

### Request for Statements of Interest and Qualifications

The Upper Guadalupe River Authority, on behalf of the Plateau Water Planning Group, is requesting Statements of Interest and Qualifications from engineering/planning firms qualified to provide professional services related to regional water management planning for the Plateau Region Water Planning Area.

Go to [www.UGRA.org](http://www.UGRA.org) or call (830) 896-5445 for Request for Qualifications details. Submission of qualifications will need to be made no later than April 30, 2011 to:

Mr. Ray Buck  
General Manager  
Upper Guadalupe River Authority  
125 Lehmann Drive, Suite 100  
Kerrville, Texas 78028  
Phone: (830) 896-5445  
TRD-201101141

Jonathan Letz  
Chair  
Plateau Water Planning Group  
Filed: March 22, 2011

## Texas Board of Professional Geoscientists

### Advisory Opinion - AOR #3 (10-003)

#### *What constitutes "responsible charge"?*

A foundation of Professional Geoscientist (P.G.) licensure, and of most other types of professional licensure, is "responsible charge". Section 1002.002(8) of the Texas Geoscience Practice Act ("the Act") defines "responsible charge" as "the independent control and direction of geoscientific work or the supervision of geoscientific work by the use of initiative, skill, and independent judgment." With licensure, a P.G.'s independent judgment becomes equivalent to professional judgment. The most typical circumstance in the public practice of geoscience is that a licensed P.G. in responsible charge of geoscientific work is the actual individual who directly performs that work. However, the Act also provides the option for a P.G. to remain in responsible charge of geoscientific work by supervising the work of others. The P.G.'s professional judgment involved in supervising the work of others is initially related to determining whether the work is actually geoscientific. Then, a P.G. must decide if the individual(s) to be supervised, who may *not* be licensed, are adequately trained or otherwise qualified to perform the particular geoscientific work. Ultimately, the P.G. who is in responsible charge and will sign and seal the geoscientific work must determine the suitability of a supervised individual to perform some specific geoscientific work and to what extent such an individual must be supervised.

"Professional geoscience services" is defined in the Texas Board of Professional Geoscientists Rules for Geoscience Licensure and the Practice of Geoscience (TITLE 22, PART 39, CHAPTER 851), §851.10(19), as "Services which must be performed by or under the direct supervision of a licensed geoscientist and which meet the definition of the practice of geoscience as defined in the Texas Occupations Code §1002.002(3). A service shall be conclusively considered a professional geoscience service if it is delineated in that section; other services requiring a Professional Geoscientist by contract, or services where the adequate performance of that service requires a geoscience education, training, or experience in the application of special knowledge or judgment of the geological, geophysical or soil sciences to that service shall also be conclusively considered a professional geoscience service."

In §1002.002(7), the Act provides additional clarification as to what constitutes geoscientific work. The "public practice of geoscience" is defined as "the practice for the public of geoscientific services or work, including consulting, investigating, evaluating, analyzing, planning, mapping, and inspecting geoscientific work and the responsible supervision of those tasks".

"Direct supervision" is further defined in the Texas Board of Professional Geoscientists Rules for Geoscience Licensure and the Practice of Geoscience, §851.10(7), as "Critical watching, evaluating, and directing of geoscience activities with the authority to review, enforce, and control compliance with all geoscience criteria, specifications, and procedures as the work progresses. Direct supervision will consist of an acceptable combination of significant control over the geoscience work, regular personal presence, reasonable geographic proximity to the location of the performance of the work, and an acceptable employment relationship with the supervised persons."

What is the difference, if any, between "supervision" as in §1002.002(8), "responsible supervision" as in §1002.002(7), and "direct supervision" as in §851.10(7) and §851.10(19)? In practice, the answer depends upon the professional judgment of the P.G. When a P.G. signs and seals a work product, that P.G. is publicly declaring that he/she has been in responsible charge of the work and is accountable for its compliance with an appropriate standard of practice. In the course of performing the work, if a P.G. decides that another individual, licensed or unlicensed, is sufficiently experienced and trained to perform certain tasks or portions of the work under the P.G.'s supervision, delegation of such tasks to this individual by the P.G. in responsible charge is permissible. The extent to which a P.G. must be physically present and involved for the supervision to be effective is a matter of professional judgment.

A situation where a P.G. would typically be expected to be physically present is during subsurface investigations such as well drilling and/or lithologic logging. The litmus test for this particular scenario can be simple. If the P.G. in responsible charge is not present when and where the work is being performed and a subordinate Geoscientist-in-Training (GIT), technician, or some other type of professional performs the delegated work to an apparent appropriate standard of practice, is there a practical means for the P.G. in responsible charge to identify deficiencies in the subordinate's work? Without drilling another well, in many situations the answer is likely *no*. This suggests that for the P.G. to exercise a reasonable standard of care, that P.G. would probably personally perform the field work or only allow a GIT or other unlicensed person to perform the work under the P.G.'s direct supervision, meaning physical presence.

Use the same scenario but modify the circumstances so that after the well is drilled and the lithologic logs prepared the subordinate preserves and brings all the soil cores or drill cuttings from the field to some other place where the P.G. in responsible charge is located. In this scenario, some P.G.s might be able to lay out all the cores or cuttings and confirm the quality of the subordinate's work by directly examining the same subject material. In this situation, some P.G.s could arguably exercise responsible supervision without having gone to the field personally to directly supervise the subordinate during the work.

Another variation on this basic drilling scenario might be if the drilled location is the most recent in a lengthy series of similar drilled locations, all in close proximity to each other. Depending upon the objectives of the work, it might be that a P.G. could directly supervise a GIT or other subordinate during an initial series of closely similar tasks and develop sufficient confidence in the subordinate's skills to allow the subordinate to work for periods without the physical presence and direct supervision of the P.G. When and if a P.G. in responsible charge believes an unlicensed subordinate is prepared to perform specific tasks and can be responsibly supervised without actually being present depends upon that P.G.'s professional judgment.

The importance of having a P.G. in responsible charge to insure that geoscientific work under their control meets or exceeds an acceptable standard of practice cannot be overstated. Should a P.G. elect to delegate geoscientific tasks to a subordinate, licensed or unlicensed, and should the work produced by the subordinate not achieve an acceptable standard, it is incumbent upon the P.G. in responsible charge to see that work deficiencies are corrected before signing and sealing the work. Sealed geoscientific work product that is demonstrably sub-standard could call into question the competency of the P.G. who was in responsible charge and even that individual's suitability to retain a Professional Geoscientist license.

## SUMMARY

Without creating an exhaustive set of scenarios and hypothetical situations, the intent of supervision, responsible supervision or direct supervision as it relates to responsible charge is that the P.G. must be in a position to not simply proofread work after the fact when it is too late to verify its accuracy. A P.G. in responsible charge is accountable for the final quality of a work product and the accuracy of the underlying data used to produce the work product. A P.G. in responsible charge who supervises others in the performance of specific tasks that contribute to a final work product must be able to monitor work in progress and, if necessary, step in and provide additional guidance or corrections before undetected errors become deficiencies in the final geoscience work product to the detriment of public health, safety or welfare.

TRD-201101097

Michael D. Hess

Executive Director

Texas Board of Professional Geoscientists

Filed: March 16, 2011

## Public Utility Commission of Texas

### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 14, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Universal Cable Holdings, Inc. dba Suddenlink Communications for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 39256.

The requested amendment is to expand the service area footprint to include Ward County, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 39256.

TRD-201101106

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 17, 2011

### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 17, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Northland Cable Television, Inc. for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 39260.

The requested amendment is to expand the service area footprint to include the municipality of Dublin, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin,

Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 39260.

TRD-201101154

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 22, 2011



#### Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On March 15, 2011, Zayo Bandwidth, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) Certificate Number 60834. Applicant seeks to (1) reflect a pro forma merger with and into Zayo Group, LLC, with Zayo Group, LLC as the surviving entity; and (2) change its name to Zayo Group, LLC.

The Application: Application of Zayo Bandwidth, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 39257.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 1, 2011. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 39257.

TRD-201101100

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 16, 2011



#### Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on March 17, 2011, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of TerraCom, Inc. d/b/a TerraCom Wireless for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.418. Docket Number 39261.

The Application: The company is requesting ETC designation in order to be eligible to receive federal universal service funding to assist it in providing universal service in Texas. The company is seeking only low income support, and is not requesting high cost support. Pursuant to 47 United States Code §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs for service areas set forth by the commission. TerraCom Wireless seeks ETC designation throughout the non-rural GTE-Southwest d/b/a Verizon Southwest, Inc.-TX, GTE-Southwest d/b/a Verizon Southwest, Inc.-TX (Contel) and Southwestern Bell d/b/a AT&T Texas service territories. The company requested an effective date no earlier than 30 days after publication in the *Texas Register*, which in this in-

stance is May 2, 2011. The company holds Service Provider Certificate of Operating Authority Number 60758.

Persons who wish to comment on this application should notify the Public Utility Commission by April 21, 2011. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 39261.

TRD-201101155

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 22, 2011



#### Notice of Application for Waiver of Denial of Numbering Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 17, 2011, for waiver of denial by the Pooling Administrator (PA) of Verizon Southwest request for assignment of one (1) thousand-block of numbers in the Nassau Bay rate center.

Docket Title and Number: Petition of Verizon Southwest for Waiver of Denial of Numbering Resources, Docket Number 39262.

The Application: Verizon Southwest requested one (1) thousand-block of numbers in the Nassau Bay rate center. Verizon Southwest is launching a new voice over internet protocol service, FiOS Digital Voice. Verizon Southwest submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because Verizon Southwest did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than April 11, 2011. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 39262.

TRD-201101156

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 22, 2011



#### Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on March 17, 2011, to amend a certificate of convenience and necessity for a proposed transmission line in Angelina, Cherokee, and Nacogdoches Counties, Texas.

Docket Style and Number: Application of Cherokee County Electric Cooperative Association to Amend its Certificate of Convenience and

Necessity for a Proposed 138-kV Transmission Line within Nacogdoches, Cherokee, and Angelina Counties. Docket Number 39243.

The Application: The application of Cherokee County Electric Cooperative Association (CCECA) is designated as the Pump Station 39 138-kV Transmission Line Project. The proposed project is presented with eight alternative routes. CCECA has designated Route 3 as their preferred route. Any route presented in the application could, however, be approved by the commission. Depending on the route chosen, the proposed line will be approximately 9 to 11 miles in length. The proposed project will be constructed on single-pole structures. The total estimated cost for the project is \$8,692,100. The estimated date to energize facilities is October 1, 2012.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is May 2, 2011. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 39243.

TRD-201101153

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 22, 2011



#### Notice of Filing to Withdraw 511 Service Pursuant to P.U.C. Substantive Rule §26.208(h)

Notice is given to the public of AT&T Texas' application filed with the Public Utility Commission of Texas (commission) on March 2, 2011, to withdraw 511 Service without prejudice to reintroducing the service at a later date pursuant to P.U.C. Substantive Rule §26.208(h).

Docket Title and Number: Application of AT&T Texas to Withdraw 511 Service without Prejudice to Reintroducing the Service at a Later Date Pursuant to P.U.C. Substantive Rule §26.208(h), Docket Number 39212.

The Application: AT&T Texas filed an application to withdraw 511 Service without prejudice to reintroducing the service at a later date. The 511 Service has been in existence since December 21, 2010, and has no current customers subscribing to the service. The only prospective subscriber, Texas Department of Transportation, agreed that the current tariff should be withdrawn at this time without prejudice to reintroducing the tariff at a later date. The proceedings were docketed and suspended on March 3, 2011, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) 1-800-735-2989. All inquiries should reference Docket Number 39212.

TRD-201101152

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 22, 2011



## Texas Department of Transportation

### Aviation Division - Request for Proposal for Professional Engineering Services

Dimmit County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at Dimmit County Airport during the course of the next five years through multiple grants.

**Current Project:** Dimmit County. TxDOT CSJ No.: 1122CRIZO. Scope: Provide engineering/design services to rehabilitate airfield lighting.

There is no DBE goal. TxDOT Project Manager is Paul Slusser.

Future scope work items for engineering/design services within the next five years may include the following:

1. Rehabilitate and mark Runway 13-31
2. Rehabilitate and mark parallel taxiway
3. Rehabilitate and mark stub taxiway
4. Rehabilitate hangar access taxiway
5. Rehabilitate aprons
6. Rehabilitate shade hangar apron
7. Extend parallel taxiway to Runway 31 end

Dimmit County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project description, and most recent Airport Layout Plan are available online at [www.txdot.gov/avn/avninfo/notice/consult/index.htm](http://www.txdot.gov/avn/avninfo/notice/consult/index.htm) by selecting "Dimmit County Airport." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

**Please note:**

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than April 26, 2011, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Becky Vick.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at <http://www.txdot.gov/business/projects/aviation.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Becky Vick, Grant Manager. For technical questions, please contact Paul Slusser, Project Manager.

TRD-201101151

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: March 22, 2011

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**Public Notice - Aviation**

Pursuant to Transportation Code, §21.111, and 43 Texas Administrative Code §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

[http://www.txdot.gov/public\\_involvement/hearings\\_meetings](http://www.txdot.gov/public_involvement/hearings_meetings).

Or visit [www.txdot.gov](http://www.txdot.gov), click on Public Involvement and click on Hearings and Meetings.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-201101150

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: March 22, 2011  
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## How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

## TITLE 1. ADMINISTRATION

### Part 4. Office of the Secretary of State

#### Chapter 91. Texas Register

40 TAC §3.704.....950 (P)